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The Washington Constitutional Convention of 1889

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THE WASHINGTON CONSTITUTIONAL CONVENTION OF 1889

by

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TABLE OF CONTENTS

Chapter	Page
I PROLOGUE	1
II FRAMEWORK OF GOVERNMENT	23
III THE FRAMEWORK OF COUNTY GOVERNMENT	53
IV PERTAINING TO THE BALLOT	76
V THE CORPORATION ARTICLE	95
VI A BUSY WEEK	117
VII LANDS AND WATERS	140
VIII EPILOGUE	186
APPENDIX	197
BIBLIOGRAPHY	198

THE WASHINGTON CONSTITUTIONAL CONVENTION OF 1889

CHAPTER I

PROLOGUE

The Territory of Washington attempted to attain statehood on several occasions, but attempt after attempt met defeat. The meager population of the territory and the physical and political immaturity delayed the attainment of the goal. In 1870 the population of Washington was only 23,955.¹ Ten years later the population was 75,116, an increase but not a large enough one to warrant statehood.² The Cascade Mountains divided the territory into two differing geographical districts. These districts differed in politics also; the

1 Statistics of the Population of the United States, Compiled from Returns of the Ninth Census of 1870, Secretary of the Interior, June 1, 1870, Vol. 1, p. 293.

2 Statistics of the Population of the United States, Compiled from Returns of the Tenth Census of 1880, Census Office, Department of the Interior, Vol. 1, p. 83.

"Easterners" were Democrats, the "Westerners" were Republicans.

If statehood was to be attained, an agent that would bring people into Washington and that would unite the two geographical districts was needed. The railroad companies seemed to be the agent sought, and railroad development in the territory was followed with interest.

During the territorial legislative session of 1867-1868, a plan was forwarded, by certain Eastern Washington Democrats, that would have had the immediate effect of making Portland the railroad terminal for the Pacific Northwest and Walla Walla the capital of the Territory of Washington.³ These were two of the provisions of a plan that was rushed through the legislature disguised as a Memorial to Congress asking for the annexation of solidly Democratic Northern Idaho to Washington.⁴ Accompanying this Memorial was a bill asking Congress for statehood if the people of the Territory so voted. The bill also asked the people of the Territory to approve the calling of a constitutional convention if statehood was granted.⁵

It soon became apparent that the Northern Pacific Railroad Company which had planned to build its Pacific

3 Keith Alexander Murray, "The Movement Toward Statehood in Washington" (Thesis, University of Washington), pp. 55-57.

4 Statutes of the Territory of Washington, 1st Biennial Session, pp. 54-55.

5 Ibid.

Terminal on Puget Sound would be handicapped if the Territory became a state under these conditions. If the men who favored these bills, the Walla Walla Democrats, gained control of the state, they would place the terminal in Portland, thus putting Walla Walla on the main line. By so discouraging the Northern Pacific Railroad from building in Washington, the Walla Walla Democrats would be in position to make a lucrative deal with the Oregon Railway and Navigation Company, a subsidiary of the Union Pacific Railroad, in exchange for rights of way in the state. Part three of the Memorial, calling for the annexation of solidly Democratic Northern Idaho, was an essential section in this plan. Those votes were needed to shift political control of the state into Democratic hands and to move the Capital from Republican Olympia to Democratic Walla Walla.⁶ Republican Territorial Delegate to Congress, Alvin Flanders, had this in mind and refused to sanction the bill when it came before Congress which adjourned without acting on it.⁷

In 1871 and 1873 the Territorial Legislature submitted statehood proposals to the people which failed for lack of popular interest in 1872 and 1874.⁸ In 1875 Walla Walla petitioned Congress for annexation to Oregon in protest to the creation of Columbia County out of its domain and as a protest

6 Murray, "The Movement Toward Statehood," pp. 56-57.

7 Ibid., p. 58.

8 Ibid., pp. 76 and 79.

against the Republican Territorial Government.⁹ This petition failed to stir Congress as it adjourned before acting on it. The plan did, however, change the attitude of the territorial populace to such an extent that in 1876 they ratified the proposal to petition Congress for statehood and to call a Constitutional Convention to frame a constitution. The vote on this measure showed almost a complete change in the attitude toward statehood taken by the people.

Only five of the river counties (including Walla Walla County) whose interests were tied with Portland and the Oregon Navigation Company, failed to give the proposed Constitutional Convention a majority vote.¹⁰

The vote on the election of delegates to this convention was small, with only a fifth of the voters taking part. A Walla Walla paper claimed this light vote showed that the people were not altogether in favor of statehood.¹¹ However, the convention met in Walla Walla in 1878 and framed a constitution.

This constitution of 1878 reflected a distrust of corporations, railroads and state officials. One clause (Article XIII, Section 1) provided that all charters and special privileges that had not been fulfilled were to be

9 Ibid., pp. 82-89.

10 Ibid., p. 98.

11 Walla Walla Weekly Union, April 20, 1878, p. 2.

invalidated at the time that the constitution was adopted.¹² Stockholders of corporations were liable for labor performed and banks could not be organized under legislative enactments.¹³ Another section declared railroads to be public highways and "free to all persons for the transportation of their persons and property," with rates to be established by the state legislature.¹⁴

Many provisions had been adopted in the interest of economy in state government. Proposed salaries for state officials were very low, the legislature could sit for only forty days, and the circuit court judges had to sit in as State Supreme Court Justices. This economy move even eliminated the office of the Lieutenant Governor.¹⁵

These provisions of the Walla Walla Constitution of 1878 showed that even the leading political figures of the Territory, the delegates to this convention, distrusted railroads and legislatures. This attitude of distrust grew,

12 This provision was apparently directed against the Northern Pacific Railroad which had aroused ill feeling because it made no attempt to build a line in accordance with its charter up to the time the convention met. (Airey, "A History of the Constitution and Government of Washington Territory" (Thesis, University of Washington, 1945), pp. 420-421.)

13 Article XIII, Sections 6 and 8. See Edward Meany and John Condon, Washington's First Constitution, 1878, and Proceedings of the Convention.

14 Article XIII, Section 3.

15 Article XIII, Section 4; Article VII, Section 6.

paralleling the increased awareness that the Northern Pacific Railroad Company was not fulfilling its pledge to build railroads in exchange for the lands granted it by the federal government.¹⁶ Distrust of the legislature, as exemplified in the constitution, arose from such legislative acts as the donation of state lands to the railroads, made by the legislature in 1873.¹⁷ The distrust of the railroads and legislatures shown in the constitution earmarked the attitude towards them that was to extend into the Constitutional Convention of 1889, and more forcefully into the state elections of 1896.

In 1878 the railroads and transportation companies felt that they would be greatly affected if the constitution framed in Walla Walla was adopted. Hence they used their influence against it. They were somewhat successful as can be seen in the fact that Cowlitz and Pierce Counties, which had been greatly aided by the advent of the Northern Pacific Railroad, voted against the constitution, as did Skamania County which was influenced by the Oregon Railway and Navigation Company. Walla Walla and Columbia Counties voted against it, influenced by the threat of Ladd and Tilton, two Portland Capitalists, who claimed that they would not build their proposed railroad through these counties if the constitution was

16 Meany and Condon, Washington's First Constitution, p. 51.

17 Laws of Washington, 4th Biennial Session, 1873, p. 577.

adopted.¹⁸ However, the constitution was ratified by the Territory by a vote of 6,462 to 3,231.¹⁹

Despite this ratification of the constitution the Democratic Congress could not forget politics long enough to let a Republican Territory become a state. Beginning with 1881 every session of the Territorial Legislature petitioned Congress for statehood, to no avail. The Democratic Congress frowned on granting statehood to a Republican territory with such a small population.²⁰ Finally, in 1889, after the elections of 1888 had placed more Republicans in Congress and the railroads had brought more people to Washington, President Cleveland signed the Congressional bill that granted statehood to the Territory of Washington.²¹

The Enabling Act permitted Washington, North and South Dakota, and Montana to enter the Union. It contained twenty-five sections which can best be summarized by stating its full title:

18 Airey, A History of the Constitution, pp. 420-421.

19 Meany and Condon, Washington's First Constitution, p. 62.

20 John P. Hicks, "The Constitution of the New States," University of Nebraska Studies, Vol. XXIII, pp. 17-18.
"With every qualification for statehood more than fulfilled, the ambition of Washington ... failed of realization chiefly because the Democratic party maintained control of some branch of the national government."

21 United States Statutes at Large, XXV (Wash. 1889), 50th Congress, 2nd Session, Chapter 180, pp. 678-684.

An act to provide for the division of Dakota into two states, and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and state governments, and to be admitted into the Union on an Equal footing with the original States, and to make donations of public lands to such states.

The Act directed the Territorial Governor to call for an election of seventy-five delegates to a Constitutional Convention, three from each of the twenty-five legislative districts in the territory. Seats in the convention were given to all political groups, as minority representation was provided in the clause,

... in each of which districts three delegates shall be elected, but no voter shall vote for more than two persons for delegates to such convention.... 22

This provision had the effect of giving a majority to the Republicans while securing a voice for the Democrats as well.

The Territorial Central Committees of both parties, recommended candidates and helped in their election, but in general campaigns were conducted by the political parties of the legislative districts without state-wide organizations.²³

Such selection of delegates by the local districts produced a variety of political platforms among the delegates of the same party. The Republican party of Spokane and Walla Walla pledged never to sell the school and tide lands.²⁴ In

22 Ibid., Section 3.

23 Spokane Falls Review, May 16, 1889.

24 Ibid., May 9, 1889; Walla Walla Weekly Union, May 11, 1889.

the Puget Sound area the Republican platform did not mention this provision.²⁵ Both sections of the territory and both political parties campaigned on the principle that the constitution should restrict the legislature and correct its abuses, should control corporate activity, and protect the rights of the common man. In Walla Walla and Spokane Falls both Democrats and Republicans campaigned on the same principle.²⁶ The Republican candidates of the four King County districts agreed to restrain corporate activity and drew up a joint platform:

Whereas, the corporations are creatures of the law and the history of the past has shown them to be aggressive and often acting in a manner regardless of the rights and interests of the people, therefore be it Resolved, that our delegates to the constitutional convention be and they are hereby instructed to vote and use their influence for inserting in the Constitution of the State of Washington reasonable provisions for the restraint and control of all corporations existing or doing business within the limits of the state ... and to insist that the heritage of the people shall not be taken from them for the advantage of corporations or private speculators. 27

A Western Washington paper had forecast the candidate's platforms. The paper also said that the contest between corporations and the rights of the people would be the main theme of the convention.

25 Portland Morning Oregonian, May 8, 1889.

26 Walla Walla Weekly Union, May 11, 1889; Spokane Falls Review, May 9, 1889.

27 Portland Morning Oregonian, May 8, 1889.

The relations of capital and labor, corporations as against rights reserved in behalf of the general public will probably be the most important question to be decided.... 28

Candidate George Turner of Spokane Falls campaigned on a claim of being an "earnest friend of labor" and in favor of "curbing capital so it would not oppress labor."²⁹ However, he believed that the delegates to the convention should be different from the "cranks" that had framed the 1878 constitution, with its strong restrictions on corporations. In a letter to ex-Governor Ferry, Turner said,

There has been considerable talk about the personnel of the convention over here, and we are determined as far as we can to make it what it ought to be. Can you not reach an understanding with all elements on that side [of the Cascades] like minded with ourselves, whereby none but liberal broadminded men shall be sent to the convention? I feel deeply the great harm that is likely to accrue to us as a people if the convention is permitted to drift into the control of narrow minded bigotry and intolerance. 30

Judge Turner was quite concerned over the election of delegates as he felt that if the wrong delegates were elected, they might "reproduce the constitution made some years ago or perhaps worse."³¹

28 Olympia Washington Standard, April 19, 1889.

29 Spokane Falls Review, May 9, 1889.

30 George Turner to E. P. Ferry, February 25, 1889, Elisha P. Ferry Documents, Pacific Northwest Collection, University of Washington.

31 Ibid.

Despite the long struggle toward statehood, the election aroused little interest and polled only a light vote, ranging from one fifth to one half of the total number of voters.³² Forty-three Republicans, twenty-eight Democrats, two Labor Party and two Independents were elected as delegates to the convention. They represented almost every activity and profession; twenty-two were lawyers, fifteen were farmers, six were doctors, five were merchants, and five were stockmen. There were two teachers, two miners, two real estate dealers, two editors, two millmen, and two loggers. A preacher, a surveyor, a fisherman, and a mining engineer were also elected. Their ages ranged from sixty-nine years to thirty years, and the average age was about forty-five.³³ Three had served as delegates to constitutional conventions before.³⁴

Delegates Edward Eldridge and Francis Henry had been members of the Walla Walla Constitutional Convention of 1878, and N. G. Glascock had been a member of the California Constitutional Convention.³⁵ Of these three delegates Francis Henry was to be most remembered, not only as a convention delegate,

32 Spokane Falls Review, May 16, 1889.

33 Barton's Legislative Hand-Book and Manual of the State of Washington, 1889-1890, compiled by C. M. Barton, Secretary of the Senate, p. 169.

34 Tacoma Daily Ledger, July 4, 1889. For more information on the delegates see the Appendix.

35 Tacoma Daily Ledger, July 4, 1889.

but as the author of the popular early-day song, "The Old Settler."³⁶

Other well-known men elected to the convention were: the former Mayor of Seattle, Dr. T. T. Minor; John A. Shoudy who founded the City of Ellensburg (named for his wife Ellen); Daniel Buchanan, Ritzville's "Thrifty Scotchman"; C. H. Warner of Colfax, the chairman of the Democratic Territorial Committee; and two of the richest men in the territory, J. J. Browne of Spokane Falls and H. G. Blalock of Walla Walla.³⁷

Many of the delegates played an important part in public life after the convention. S. G. Cosgrove was elected Governor of the State but died before taking office, J. P. Hoyt of Seattle, R. O. Dunbar of Goldendale, and T. L. Stiles of Tacoma were elected to the first State Supreme Court, Allen Weir of Port Townsend became the first Secretary of the State of Washington, George Turner of Spokane Falls became a United States Senator. John F. Govey was later appointed United States Minister to Japan.³⁸

Several others sought public office, partly on the political strength they secured in the convention, but were unsuccessful. P. C. Sullivan of Tacoma ran for state governor

36 C. H. Hanford, Seattle and Environs, Vol. 1, p. 581.

37 Tacoma Daily Ledger, July 7, 1889; Olympia Washington Standard, July 26, 1889.

38 Austin Mires, "Remarks on the Washington Constitution," Washington Historical Quarterly, Vol. XXII, No. 4, p. 278.

on the Republican ticket in 1896 but was defeated. T. C. Griffiths was unsuccessful in his campaign for Congress on the Democratic ticket in 1889. In the same year J. R. Kinnear lost the Republican nomination for Governor that he so strongly desired.³⁹

Politically, the convention was Republican, as there were forty-four Republican delegates, compared to the twenty-eight Democrats that were present. Sectionally, the Western Washington delegates were five votes stronger than those from east of the mountains. Generally, the most noticeable element of the convention was the wealth and successfulness of its constituents.⁴⁰ It was stated that the delegates to the Washington Convention represented more wealth than the delegates to any other convention of that time.⁴¹

The delegates believed, as did the delegates to the Convention of 1878, that the legislature should be constitutionally restricted in such manner that it would not become the farce which, in their eyes, the legislatures of New York,

39 N. H. Owings, Secretary of the Territory, to E. P. Ferry, ex-Governor of the Territory, a letter written July 23, 1889, Ferry Documents; Puget Sound Weekly Argus, August 22, 1889; Walla Walla Weekly Union, August 24, 1889.

40 F. N. Thorpe, "Recent Constitution Making in the United States," Annals of the American Academy of Political and Social Science, Vol. 11, No. 2, September 1889, p. 8.

41 Airey, A History of the Constitution, p. 443, citing the Portland Telegram, August 11, 1889.

Delaware, New Jersey, Pennsylvania and Oregon had become.⁴²
 The delegates desired to restrict corporate and especially
 railroad exploitation of the territory.⁴³ Above all, many
 delegates wanted to keep the school and other state lands out
 of the hands of the corporations.⁴⁴

Accompanying the problem of restricting legislatures
 and corporations, the delegates saw the need to establish
 state and county governments with their various departments,
 to answer or ignore the demands of the women suffragists and
 the prohibitionists, and to provide an income to enable the
 state to operate efficiently. Education and a militia had to
 be provided for, cities and townships had to be organized,
 voting methods and procedures had to be prescribed before the
 convention could adjourn. The first immediate problem that
 confronted the convention was to effect an organization in the
 convention that would allay the rivalry between Democrats and
 Republicans, Easterners and Westerners.

Before July 4, 1889, the opening day of the convention,
 both Republicans and Democrats met in caucus to decide on
 courses of action to follow and to select candidates for the

42 Tacoma Daily Ledger, July 19, 1889; Portland Morning Oregonian, July 16, 17, 1889.

43 This can be seen in the platforms of the delegates before their election.

44 Portland Morning Oregonian, July 4, 1889.

convention offices.⁴⁵ It was assumed because of these caucuses that all voting in the convention would be done according to party policy, but in only a few instances, after the convention was under way, did party tactics and dictates influence the voting.

The East-West division of delegates was more serious than the political division. On several occasions the geographical division of delegates could be clearly seen, but nowhere was it more evident than in the Republican party in the opening days of the convention.

The day before the convention opened, one Eastern Republican Delegate said,

Delegates east of the mountains came here without a candidate for any of the offices. We found everything cut and dried by Seattle and Olympia people. We are now going in for the offices.

The west cannot get it all. We will unite on Turner for President and we will try to find candidates for minor offices. There will be a sectional fight in the [Republican] caucus tomorrow. 46

This division in the party resulted in the Eastern Republicans' backing Judge Turner and the Western Republicans' backing Judge Hoyt for the presidency of the convention.

Judge Turner was well qualified for the position. He was only thirty-nine years old, but he already had enough

45 Tacoma Daily Ledger, July 3, 1889.

46 Ibid., July 4, 1889.

political experience for any position. He had studied law in Alabama and had been admitted to the bar in Mobile when only eighteen years of age. He had been the Republican nominee for Attorney General of Alabama but had been defeated. President Grant appointed him United States Marshall in 1876, and during that year he became chairman of the Republican State Committee of Alabama, a position he held until 1884, when he resigned to come to Washington.

Turner had been a member of the National Republican Convention in 1876, 1880, 1884, and in the latter two conventions he had been chairman of the Alabama delegation. Turner was appointed Associate Justice of Washington Territory by President Arthur. Politically, Turner was nearly a Democrat.⁴⁷ He had been opposed for election as delegate to the Washington Constitutional Convention by the Northern Pacific Railroad, prominent Knights of Labor, the women suffragists and the prohibitionists.⁴⁸ However, he had been elected by a three-hundred vote majority and was well qualified in both experience and popularity to preside over the convention.⁴⁹

47 In later years Turner did become a Democrat.

48 "He [Turner] had strong support but still stronger opposition, that of the railroads, the dominant influence in the Republican State Organization." Claudius O. Johnson, "George Turner, A Character from Plutarch," Washington Law Review, Nov. 1942, Vol. XVIII, No. 4, p. 172.

49 Tacoma Daily Ledger, July 4, 1889.

Turner's supporters found him sympathetic to the Democratic party and a reluctant candidate for the presidency of the convention.⁵⁰

Judge Hoyt, on the other hand, showed that he wanted this position, but he lacked the complete support of his section that Turner had. Judge Hoyt had practiced law in Michigan and had served in the lower house of that state's legislature. For a term he was its speaker. In 1876 he was appointed Secretary of the Territory of Arizona and later he was Governor of that Territory. In 1878 he was appointed Governor of Idaho but before taking that position he accepted the position of Supreme Court Judge of Washington Territory, which position he held until 1887 when he became manager of the Dexter Horton Banking Company of Seattle and the President of the Home Insurance Company. Somewhere in his travels and positions he had become an equal suffrage advocate, and this advocacy contributed to the resentment against his candidacy for the presidency of the convention.⁵¹

The Democrats, in caucus, had decided to unite on Judge Turner if the Republican delegates from east of the mountains did.⁵² When the Republicans met in caucus, however, Judge Turner withdrew his name from the list of candidates and

50 Seattle Post-Intelligencer, July 3, 1889.

51 Tacoma Daily Ledger, July 4, 1889. See below, Chapter V.

52 Seattle Post-Intelligencer, July 7, 1889.

asked the Republicans to nominate and elect Judge Hoyt President of the Convention. To appease the Eastern Republicans and to insure the election of Hoyt, the Western Republicans nominated John I. Booge of Spokane Falls for the office of Chief Clerk.⁵³ Immediately there was a cry that Booge was a Northern Pacific employee and not a good choice for the position. But, enough delegates backed his name to insure his nomination.

On the opening day of the convention, July Fourth 1889, the delegates were sworn in, elected a temporary chairman, and made arrangements for the election of permanent officers the next day.

On July 5 the convention elected Hoyt to the Presidency and John Booge to the Chief Clerkship. Most of the Republicans voted for Hoyt and Booge, but several voted independently.⁵⁴ The reasons given by these "disgruntled" Republicans was that Hoyt was a woman suffrage advocate who would try to get women's suffrage written into the constitution.⁵⁵ They said that Booge, as an employee of the Northern

53 Tacoma Daily Ledger, July 5, 1889.

54 The Seattle Post-Intelligencer, July 7, 1889, claimed that there were eleven Republicans who voted for either Cosgrove or Warner for the Presidency. Thomas Cavanaugh, who wanted the position of Chief Clerk but lost out to Booge, says there were only six Republicans who defected. Thomas Cavanaugh to E. P. Ferry, July 7, 1889, Ferry Documents.

55 Tacoma Daily Ledger, July 6, 1889.

Pacific Railroad, would not "hesitate to prostitute his position to the interest of that corporation."⁵⁶ Thomas Cavanaugh who was later appointed printer for the convention claimed that N. H. Owings, the Territorial Secretary, and the Northern Pacific people were responsible for the "dissatisfaction in the Republican ranks."⁵⁷

The Democratic scheme to unite with the dissatisfied Republicans failed when some of the Democrats voted for Hoyt.⁵⁸

Chairman Hoyt immediately appointed a committee on rules and regulations to help him divide, among various committees, the work that had to be done and to help him set up rules and proceedings to govern the convention. The Rules Committee using the Rules and Regulations of the California Constitutional Convention as a guide drew up plans for twenty-six committees with from five to fifteen members on each.⁵⁹

56 Seattle Post-Intelligencer, July 7, 1889.

57 Thomas Cavanaugh to E. P. Ferry, Ferry Documents, "Hoyt was elected Chairman of the convention. It was against the bitter opposition of Owings and the Northern Pacific people. Nick [Owings] engineered the dissatisfaction in the Republican ranks which so nearly resulted in the defeat of the caucus selections. He constantly nagged men on to rebellion ... Nick has his forces well in hand and may be expected to raise the very devil when the time comes, and more than likely injure the party to carry or defeat something for the Northern [Pacific Railroad]."

58 Seattle Post-Intelligencer, July 7, 1889.

59 Tacoma Daily Ledger, July 6, 1889. To save space the committees and their members will be described in the chapters dealing with their reports.

Hoyt's selection of committee members and committee chairmen was an outstanding attempt to please all factions represented in the convention.⁶⁰ The Democrats received proportional representation on all committees and six committee chairmanships.⁶¹ Sectional interests were appeased with his choice of delegates for the various committees. Hoyt placed seven members from Eastern Washington on the Committee of State, School, and Granted Lands which was primarily concerned with the Western Washington tide lands.⁶²

The rules and proceedings the convention adopted were relatively simple. Proposals and propositions submitted by the delegates were referred to the proper committees. The committees treated these as they thought best, either using them, ignoring them, or changing them to their liking. Then, each committee submitted its report to the convention, where it was read and printed. Then it was set aside for one day. The second reading of the report brought the convention's consideration section by section, with debates and amendments offered on the floor. If the article was complicated, as most turned out to be, the more informal "committee of the whole"

60 Attempts by E. H. Sullivan and T. C. Griffiths, both Easterners, to take committee and committee chairmanship appointments away from the chair failed. Tacoma Daily Ledger, July 7, 1889.

61 Ibid., July 10, 1889.

62 Ibid. See also Seattle Post-Intelligencer for the same day.

handled it.⁶³ The convention or the committee of the whole, then reported the action it had taken in regard to each article. The third reading, at least three days after the article was introduced, brought the final vote on the article.⁶⁴ These rules and procedures were printed and copies were given to each delegate.

A printed article that immensely aided the delegates was the "Proposed Constitution for the State of Washington" compiled by William Lair Hill and printed in the Portland Oregonian on the opening day of the convention.

Mr. William Lair Hill had lived in Oregon since 1853. He had practiced law in Portland, and, for five years, 1872 to 1877, had been editor-in-chief of the Oregonian. In 1885 he began to codify the laws of Oregon and his work was published in two volumes by Bancroft in 1886. In 1889 he moved to Seattle and while living there the editor of the Oregonian asked him to frame a constitution that would be suitable for the incoming State of Washington.⁶⁵

63 After treatment by the committee of the whole and the convention met to ratify its decisions, the same debates often arose, which wasted time.

64 Quentin S. Smith, An Analytical Index of the Journal of the Washington State Constitutional Convention, 1889 (Thesis, University of Washington), p. 3.

65 Julian Hawthorne, ed., History of Washington the Evergreen State, from Early Dawn to Daylight, p. 609; "Hill, William Lair," by Alfred Holman, History of Seattle Washington, edited by Fredrick Grant, pp. 507-511.

The constitution Mr. Hill framed was printed in the Oregonian, and the delegates to the convention eagerly sought copies of it. Concluding this work, Mr. Hill had written,

I have drawn most upon the constitutions of Oregon, California and Illinois, because upon comparison of all [state constitutions] there seems to be in them more that is suitable to our conditions, situations and hopes. 66

The delegates were greatly influenced by Mr. Hill's constitution. They adopted without change, fifty-one of its provisions, and forty-six others with but minor changes.⁶⁷

Now that rules and proceedings had been established and committees appointed, the convention delegates were ready to proceed. One of the requirements they had to fulfill was to provide for the organization of a state government with its three branches, the legislative, the executive and the judicial. The delegates were in accord in the belief that the first function of a state constitution was to protect the people by a bill of rights, to limit the legislature's powers, and to make sure that the other branches of the government did not become corrupt.⁶⁸ This, they now set out to do.

66 Portland Morning Oregonian, July 4, 1889.

67 Constitution of the State of Washington, published by Earl Coe, Secretary of State, p. 99.

68 L. J. Knapp, "Origins of the Constitution of Washington," Washington Historical Quarterly, Vols. III-IV, p. 228.

CHAPTER II

THE FRAMEWORK OF GOVERNMENT

The first few days of the convention were spent doing the committee work that President Hoyt had assigned. The convention convened daily, and the delegates read to it the petitions they had received from their home districts and the propositions they themselves wanted to have incorporated into the constitution. Few delegates enjoyed these "reading sessions" and many stayed away from them, preferring to spend their time in their assigned committees or elsewhere discussing among themselves current political issues and events in general.

Strong reactions and long debates followed every petition and proposal that mentioned the tide lands, the corporations, or the railroads. In general these debates were of little value outside of the fact that they served as a sounding board for individual opinions. The various committee reports crystallized the debates and the real work of the convention began.

The preamble that the Preamble and Bill of Rights Committee¹ presented provoked heated discussion although the railroads and corporations were not involved, and the local allegiances of the delegates to their respective districts were not touched upon. This preamble was succinct, expressive, and clear,

We the people of the state of Washington to preserve our rights do ordain this constitution. 2

When it was presented to the convention, Mr. Dyer, a Republican lawyer of Seattle, offered the following substitute:

We the people of the State of Washington grateful to Almighty God for the blessing of liberty and self-government, do ordain this constitution. 3

Delegate Comegys of Oaksdale, also a Republican, immediately objected to this "cheap advertisement of belief in God" which occasioned a defensive reply by Delegate Dyer, and then a debate, more, an argument started.

Party lines were forgotten as Republican argued with Republican and Democrat with Democrat along pro-Deity and anti-Deity lines. Delegates Dyer, Cosgrove, Turner, Buchanan,

1 This committee was composed of delegates Warner - Chairman, Hicks, Comegys, Henry, Dallam, Kellogg, and Sohns.

2 The Minutes of Proceedings of the Constitutional Convention, July Fourth, 1889, p. 68. (Hereafter referred to as The Minutes.)

3 Tacoma Daily Ledger, July 30, 1889.

and J. Z. Moore, representing the pro-Deity faction, argued that there was a need for showing respect to a greater power, and the religious people would expect such veneration in the constitution. To leave it out, they said, would make the convention atheists in the eyes of the public which might perhaps reject the constitution for that reason.⁴ The opposition answered that the inclusion of the name of the deity in a purely business proposition was unseemly. Delegate Sturdevant added that the United States constitution employed no such term of respect, and Sturdevant's confreres Comegys, Warner, the two Sullivans, Godman and Griffitts, after saying that they, too, were religious men but "didn't shout it from the housetops," claimed such a term of respect would be but pure sentiment. Bitter insults were exchanged before the debates ended an hour and a half later.

Two days after this debate the committee presented a preamble that followed the lines of the Preamble of the Proposed Constitution of 1878 and paid respect to a "Supreme Ruler of the Universe." There were no public debates on this preamble, and it was adopted by a vote of fifty-eight to eighteen.⁵

The newspapers of the territory took the convention to task for such an indecorous debate. The Spokane Falls

⁴ Ibid.

⁵ The Minutes, p. 216.

Northwest Tribune, was not alone among the territorial newspapers when it claimed with bitter irony that ". . . the preamble of our constitution has been made to strain a point and recognise its gratefulness to a Supreme Being."⁶ Other newspapers criticized the convention for wasting time with such a small matter, thus magnifying its importance. A Seattle paper summed up the criticisms in two sentences.

A long and somewhat tedious debate ensued over the preamble from which mention of the Deity had been purposely omitted. The wrangle over the question lasted two days, and it finally ended in the complete rout of the heretics and the triumph of the hosts of the Lord.⁷

The second part of the same committee's report, the Bill of Rights, did not receive the same vociferous treatment accorded the preamble. It was neither unusual nor original and contained the basic provisions found in every bill of rights. One section provided for a republican form of government, another stated the fundamental rights of citizenship, a third insured impartial trials for citizens, and others granted the abstract principles of equality before the law, and the right to private property.⁸

6 August 2, 1889.

7 Seattle Post-Intelligencer, August 5, 1889.

8 The Minutes, pp. 256-259.

Although the majority of the sections in the Bill of Rights were similar to the constitutions of many states, two sections, the grant of eminent domain for irrigation purposes and the prohibition of "armed detectives," reflected the sentiment and development of the territory. The irrigation interests felt that a provision should be inserted in the Bill of Rights that would allow farmers to build roads and irrigation canals across lands owned by others. Consequently, amendments were offered in the committee of the whole to permit this, and the resulting section read

Private property shall not be taken for private use except for private ways of necessity, and for drains, flumes, or ditches on or across the lands of others for agricultural, domestic or sanitary purposes. 9

During the first month of 1889 "armed detectives" had been employed by the mine owners at Roslyn and Newcastle to help break the strike of the Knights of Labor. The use of these "detectives" caused a reaction against this practice with which the convention delegates were quite in harmony. Hence they included in the constitution a clause (Article One, Section 24) prohibiting the further use of "detectives" or armed bodies of men.¹⁰

9 Constitution of the State of Washington, published by Earl Coe, Secretary of State, Olympia, p. 101. However, not until a constitutional amendment provided one, was there any method of determining if the use for which private property is taken is public or private.

10 The Minutes, p. 318.

In addition to these provisions there were two sections, sections eleven and twelve, that could have been incorporated into the legislature article's limitations of legislative activity. Section eleven, similar to a provision in the Proposed Constitution of 1878 forbade the legislature from appropriating money or property for "any religious worship, exercise, or institution or the support of any religious establishment."¹¹ Section twelve restricted the legislature from granting special privileges to persons or corporations. Evidently both sections which limited legislative activity were felt to be needed, as the delegates did not debate their passage.

The report submitted by the committee on State Legislature also limited legislative activity.¹² Some long and protracted debates arose over sections in this report and many amendments were proposed, but this was natural as the general desire of the delegates was to correct legislative abuses.

"The subject to which the constitution makers turned most naturally was that of reforming the legislature,"¹³ for their era was one in which the "wholesale corruption of state

11 Constitution of the State of Washington.

12 The Committee was composed of Delegates J. Z. Moore, Buchanan, Stevenson, Neace, McReavy, Morgans, Coey, Gray, and Tibbetts.

13 J. P. Hicks, The Constitutions of the Northwest States, p. 31.

legislatures [was] laughed at by honest men throughout America."¹⁴ The scandalous conduct of the legislatures of New York, Delaware, Nevada, New Jersey, Pennsylvania, and even Oregon was mentioned in the Tacoma Daily Ledger in the hope that the convention could provide for a legislature that would not allow such corruption.¹⁵ Even the Portland Morning Oregonian listed the states (but did not include Oregon) whose legislatures had tended to corruption, and called for a constitution for Washington that would prevent this.¹⁶ These ideas coincided with the ideas of many of the delegates and were exemplified in the debates over the legislature article.

If, said one delegate, a stranger from a foreign country were to drop into this convention, he would conclude that we were fighting a great enemy, and that this enemy is the legislature.¹⁷

Two different proposals to limit legislative abuses were advocated in the convention. Delegates Turner and Dunbar, advocating a large legislature, claimed it would be difficult to corrupt and to do so would be too expensive to be worth while. They argued that small legislative bodies would be "too easily influenced by corporations." To the contrary,

¹⁴ Tacoma Daily Ledger, July 19, 1889.

¹⁵ Ibid.

¹⁶ Portland Morning Oregonian, July 17, 1889.

¹⁷ Tacoma Daily Ledger, August 9, 1889.

Suksdorf and Comegys claimed that large legislative bodies were just as easily corrupted for only the leaders need be corrupted, as the majority merely follow their leadership. Besides, they claimed, a large representative body would cost the state too much in salaries and travel expenses.¹⁸

These arguments lasted through all the July 11 morning session and ended without a final decision. The legislative committee, meanwhile, considered this debate and provided that the legislature of the state should be composed of a House of Representatives containing "not less than sixty-three nor more than ninety-nine members," and a Senate which would have "not more than one-half nor less than one-third of the number of members in the House of Representatives."¹⁹ To this conclusion the convention readily agreed. Only once had the suggestion of a unicameral legislative body arisen and though not given serious consideration, the delegates tended to agree with the Seattle Post-Intelligencer which thought it would be interesting if some other state would experiment with a unicameral legislature.²⁰

18 Tacoma Daily Ledger, July 12, 1889.

19 The Minutes, p. 253.

20 Seattle Post-Intelligencer, July 23, 1889. The Report of the Advisory Constitutional Revision Committee of the State of Washington 1935, State Printer, Olympia, recommends a unicameral legislature to reduce state expenses and to give more efficient state legislation.

The legislative committee then turned to the question of legislative procedure. They provided that any bill could originate in either house; a bill could contain only one subject; and a recorded majority vote on a bill was needed before a bill could be sent to the governor for his signature.²¹

Although it is followed religiously by the legislature, this latter section was ruled jurisdictionally unenforceable, as it provided no way by which the passage of a bill could be tested.²² The legislature was restricted to sixty-day sessions to make sure each session would end before it cost the state too much in legislative salaries which were established at five dollars a day.

The legislature article was not solely concerned with the legislature. One section, resulting from the hysteria of the time, prevented alien ownership of land. Lingering resentment from anti-Chinese riots of 1886 was expressed by the delegates in this section. However, there was no move to bar alien capital because it was thought necessary to further develop and industrialize the state.

Another section, taken from the Proposed Constitution of 1878, which the convention adopted was section twenty-six which directs the legislature to determine "in what manner and

21 Article Two, Sections 19, 20, and 22.

22 Theodore Stiles, "The Constitution of the State and Its Effects upon Public Interests," Washington Historical Quarterly, Vol. IV, No. 4, p. 250.

in what courts suits may be brought against the state." Few other states had incorporated such a provision into their constitution and the delegates thought it quite original.

Most of the opposition to the report of the Committee on the Legislature hinged on those sections that were designed to limit the activities of the legislators. However, some restrictions such as forbidding the legislators from authorizing lotteries or divorce, diminishing or increasing salaries during an office term, giving corporations special powers or privileges, or incorporating towns or villages by special acts were easily passed or, at most, with only little opposition. But the section (thirty) that had for its purpose the prevention and punishment for taking bribes and corrupt solicitation, met stern opposition in the committee of the whole. Delegates Dunbar, Schooley, Cosgrove and E. H. Sullivan opposed that clause that said,

Any person may be compelled to testify in any lawful investigation ... and shall not be permitted to withhold his testimony on the ground that it may criminate himself or subject him to public infamy. 23

This opposition claimed that it would force a person to testify against himself and hence would be contrary to the Constitution of the land. J. Z. Moore, Stiles, Griffitts and Buchanan, however, thought that it wasn't unconstitutional and was needed

23 The Minutes, p. 259.

to prevent and punish bribery among future legislators. Delegate Stiles told the committee that the section was framed by the great jurist, Judge Jeremiah Black, and in all probability was constitutionally sound.²⁴ In later years, though, Stiles, who became a Justice of the State Supreme Court, admitted that the provision was unenforceable, as it did compel a person to testify against himself.²⁵

Another limitation on the legislators was proposed by Delegate J. Z. Moore, in a minority report of the Legislative Committee, which prohibited a state office holder from receiving or using a free pass from any railroad or transportation corporation.²⁶ These free passes had previously been considered a favorite means by which the railroads could influence state officers, and with their abolition there was established a panacea for overactive railroad lobbying, or so it seemed to the delegates. This section was adopted by a vote of thirty-seven to twenty-nine, and neither partisan nor regional lines were followed.²⁷

Several restraints on the legislature, that the committee on this subject had proposed, failed of passage. One

24 Tacoma Daily Ledger, August 10, 1889.

25 Theodore Stiles, "The Constitution and Its Effects," Washington Historical Quarterly, Vol. IV, No. 4, p. 286.

26 The Minutes, p. 315.

27 Ibid.

section of their report provided an oath to be taken by the members of the legislature.

I do solemnly swear (or affirm) that I will support the Constitution of the United States and the constitution of the State of Washington, and will faithfully discharge the duties of my office according to the best of my abilities, and that I have not knowingly or intentionally paid or contributed any or made any promise in the nature of a bribe ... to influence any vote at the election at which I was chosen to fill said office, and have not accepted, nor will I accept ... any money, pass or other valuable thing from any corporation, company or person for any vote or influence I may give or withhold on any bill or resolution or appropriation or for any other official act. 28

Those that failed to take said oath or violated it were to be punished by forfeiture of office. Delegate Eschelman, a North Yakima Minister, moved to strike the oath from the article and the delegates agreed to this by a vote of thirty to twenty-five.²⁹ Later the convention confirmed the deletion of this section.³⁰ Most of the delegates felt that it was the legislature's duty, not the convention's, to provide for the loyalty and trustfulness of its members.

Delegates Buchanan (Rep.) and Griffitts (Dem.) proposed an amendment that prohibited the delegates from attaining state offices. It was tendered in all seriousness, though laughingly adopted by the committee of the whole, and then soberly dropped

28 The Minutes, p. 257.

29 Tacoma Daily Ledger, August 9, 1889.

30 The Minutes, p. 313.

by the convention. The delegates had no desire to place a limitation on themselves.³¹

When this latter amendment of Buchanan and Griffitts had been defeated, the final vote on the legislative article, as amended, was called. The article was approved by a vote of forty-four to twelve. Opposition to the article was scattered, so it could probably be surmised that partisan and sectional interests were not involved.³²

There was little really significant debate in the convention on this legislative article, and, in general, it was thought that the article contained little that was outstanding or original in the way of provisions.³³ Despite some moves to restrict the legislature, little was done in that regard.³⁴ Whether the article itself contained too many measures that should have been left to the legislature is hard to say. Some of the sections that were claimed to be too legislative were changed or dropped. An example of this is this section that the Legislative Committee proposed,

31 The Minutes, p. 318. The Seattle Post-Intelligencer, August 10, 1889, was quite bitter and sarcastic when the convention defeated this measure.

32 The Minutes, p. 319.

33 "So marked is the tendency," said the Seattle Post-Intelligencer, August 12, 1889, "to imitate [the California Constitution] that a member one day objected to a certain provision because it was not found in that Constitution."

34 Airey, A History of the Constitution, p. 457.

Mechanics, Laborers, and material men shall have liens upon the property of their employers for labor performed or material furnished and the legislature shall provide for the summary enforcement of the same. 35

Because of this and other deletions, mostly minor matters, or those treated above, the article did not contain the tone of hostility to the legislature it was at first believed it would contain, for "it [was] not believed that the framers of the Constitution went beyond their limits in Article Two, creating and defining the limits of legislative authority."³⁶

The next need was to define the legislature's power to borrow money for the state.

As it became increasingly clear that few state legislatures could be trusted to use the borrowing power wisely and in moderation constitutional limitations were written into state constitutions. 37

The delegates included in the report of the Committee for State Indebtedness a clause prohibiting excessive state indebtedness.

... debts, direct and contingent, singly or in the aggregate, shall not at any time exceed four hundred thousand dollars 38

35 The Minutes, p. 260.

36 L. J. Knapp, "Origins of the Constitution of Washington," Washington Historical Quarterly, Vol. IV, No. 4, p. 247.

37 Austin F. McDonald, American State Government and Administration, p. 363.

38 The Minutes, p. 172.

Opposing factions took the floor of the convention claiming, like Delegates Turner and Cosgrove, that Washington was growing too fast and had too many public buildings to construct to place a limitation on indebtedness, while Delegates Browne and Moore in answering them claimed that a limit would insure the credit of the state and would restrict the legislature from running the state into bankruptcy. Still others including Delegates Stiles, Weir, Griffitts, Lillis, and Minor believed that the state would have to build for the future and future generations should help pay for the expenses incurred. They wanted the limit either based on a percentage of the value of the taxable property in the state or increased in amount to \$1,000,000.³⁹

All motions, however, to raise the debt limit or to change it to a percentage basis lost.⁴⁰ In convention, the move to change the limit to a "one-half of one per cent of its [the State's] taxable property" instead of a limit of \$400,000 lost by a vote of fifty-one to twenty-three.⁴¹ The Democrats approved the \$400,000 limit and cast only five votes for the percentage amendment. The Republicans were about evenly divided on the issue.

39 Tacoma Daily Ledger, August 1, 1889.

40 Ibid.

41 The Minutes, p. 224.

The limitation of the debt being passed, the convention debated the question of contracting special debts with permission from its constituency. Clauses were passed which declared the process by which state funds could be dispersed, as well as preventive measures on the state's loan of its credit. This task complete, the convention believed that the legislature which it had provided for was sufficient.

The delegates' treatment of the legislature was, initially, an attempt to prevent possible legislative abuses. Once they felt they had accomplished that, the delegates turned to preventing abuses in the executive department. The course of action they resolved upon was to abolish several of the governor's prerogatives, his veto and his pardoning power, especially.

Veto powers for the governor were provided in the report of the Committee on Executive and Pardoning Power.⁴² The report provided an item veto which was not a new measure but was considered to give the governor more power than a full veto would, and they extended this item veto to apply not only to appropriation bills but to all bills.⁴³ Opposition was to

42 Composed of Delegates Weir - Chairman, Fairweather, Hicks, Clothier, and Hungate.

43 The item veto, "... was by no means new. It had been proposed before the Civil War, and had found its way into the Confederate Constitution. It re-appeared during reconstruction, and from the 'Seventies on was incorporated into most of the Constitutions framed." J. D. Hicks, "The Constitution of the New States, University of Nebraska Studies, Vol. XXIII, p. 59.

the entire veto power, however, and not to the item veto in particular.

In the committee of the whole Republican Delegate Power of LaConner moved to amend the committee report in such a way that only a three-fifths majority vote of the legislature was necessary to override a veto, instead of two-thirds majority vote. He was seconded by Delegates Jones and Gowey who claimed that the veto gave the governor too much legislative power. They would compromise, they said, by reducing the majority vote needed to override a veto from two-thirds to three-fifths which would take away its full power. It was then amended by J. J. Browne to read "a majority" and not "three-fifths." This, he claimed, would eliminate the onerous provisions of a veto and still make the legislature stop and think before it again acted on a bill.⁴⁴

Delegates Buchanan and J. Z. Moore immediately answered that historical precedent demanded that the executive power retain some control of the legislature. Delegate Weir, whose committee had originally framed the measure, reiterated the executive's need of the veto power to curb the legislature. Weir claimed that the convention wanted to amend everything, even those things as traditional as the veto power. "This convention," he said, "would amend the ten commandments if it had a chance."⁴⁵

⁴⁴ Tacoma Daily Ledger, July 27, 1889.

⁴⁵ Ibid.

The vote was then called on the amendment permitting a simple majority vote of the legislature to override a veto, but this amendment lost. Then the vote was called on the amendment making a three-fifths vote sufficient to override a veto, but here again the motion lost by a vote of thirty to forty-one.⁴⁶ Subsequently the provision stating that a two-thirds majority vote was needed to override a veto passed.⁴⁷

After this vote the future governors of the state of Washington were assured of their veto power. It is claimed that this item veto divides responsibility, delays comprehensive legislation, and is not in harmony with the budget system of the state.⁴⁸ It does give the governor some power to control the legislature and enables him to approve worth-while bills without sanctioning their obnoxious sections.

An amendment which would limit the governor's pardoning power was then proposed by Delegate Govey. Govey wanted this power given to a committee composed of the governor, the Secretary of State, the Attorney General, and several members of the state legislature. However, the delegates felt that this plan would pave the way for the creation of political combinations that would exchange pardons for certain

46 Ibid.

47 The Minutes, p. 199. No partisan or sectional interests were apparent in the voting.

48 Hicks, "The Constitutions of the New States," University of Nebraska Studies, Vol. XXIII, p. 60.

legislative activity, and hence they voted the measure down.⁴⁹

The Executive Committee then proceeded to a section in their report that enabled the governor to adjourn the legislature in case of a deadlock. Delegate Griffitts claimed it gave the governor too much power, and without a word in defense of the section his move to strike it was sustained.⁵⁰

The eligibility requirements for holding a state office were then reduced from a "resident of the territory at least two years" and "at least thirty-five years old"⁵¹ to a "citizen of the United States and a qualified elector of the state."⁵² Several amendments were introduced to make it impossible for the governor to succeed himself in office, but these were speedily voted down.⁵³

The Impeachment Article that came before the convention a week later was adopted without debate or amendment. The article does not allow the legislature enough time for both necessary legislation and impeachment proceedings.⁵⁴ But the

49 Tacoma Daily Ledger, July 27, 1889.

50 Ibid.

51 The Minutes, p. 158.

52 Seattle Post-Intelligencer, July 27, 1889.

53 Tacoma Daily Ledger, July 27, 1889.

54 "All attempts to follow it proved a farce ... because legislative business took all the time needed for an impeachment in a sixty day session." Airey, A History of the Constitution, p. 468.

delegates considered it neither objectionable nor unworkable and they readily adopted it.⁵⁵

The big arguments concerning the executive department arose, however, over the question of whether or not to have a lieutenant governor. In the committee of the whole Delegates Dunbar, Lillis, Sharpstein, Mires, McElroy, and the thrifty Scotchman, Buchanan, argued that the office was a needless expense and could be abolished with but little loss to the state. If the office was later found to be necessary, they argued, it could be left to the legislature to provide for it.⁵⁶ On the other hand, Delegates Weir and Gowey rebutted there would be many state institutions that would require the lieutenant governor's supervision and that an elected officer was needed to fill the governor's position if he should expire.⁵⁷

Delegate Mires tried to compromise by not creating the office in the constitution but giving the legislature power to create it if it was later found necessary to do so. His motion lost. The committee of the whole then approved the section creating the office of lieutenant governor by a vote of thirty-eight to thirty-one.⁵⁸ Some members renewed the

55 Seattle Post-Intelligencer, August 7, 1889.

56 Tacoma Daily Ledger, July 26, 1889.

57 Seattle Post-Intelligencer, July 26, 1889.

58 Ibid.

argument in the convention, and again the move to omit the office failed, this time by a vote of forty-one to twenty-nine.⁵⁹ Most of the Republican delegates voted to have this office in the state executive department. The Democrats, the minority party, thought the office was a needless expense, and twenty-one of their twenty-six voting members voted to omit it.⁶⁰

The issue of economy, present in the debate on the lieutenant governorship, appeared in all the issues that affected the state government. Every attempt to provide enough legislators to represent the state adequately and every attempt to provide enough executive officers to manage the state efficiently met the economical question of whether these officers were needed. A glance at the record of the votes taken on the various moves to reduce the salaries the executive committee had provided in their report for state executive officers, shows that both parties were interested in the issue of economy. The Democrats united more closely than the Republicans on this issue, and they always voted in the interest of economy, even when Republicans got the initial credit for reductions in expenses. The Republicans were not united on this issue of economy and divided their votes on many economy measures that arose. Both parties made an especial appeal

59 The Minutes, p. 198-199.

60 Ibid.

to the future electorate along lines of economic conservatism in the convention.

One of the issues of economy was the reduction of the governor's salary, and it was a Democratic delegate, Sharpstein, who amended to reduce it from \$4,000 to \$3,000. Sixteen Democrats voted with him and eight against him; but the Republicans united to defeat his amendment by a vote of forty-six to twenty-one.⁶¹ Then later, Republican delegates moved to reduce the salaries of the lieutenant governor, the state treasurer, and the superintendent of public instruction.⁶² In the first of the above moves twenty-eight Republicans and only four Democrats opposed the proposed reduction; on the second move twenty-nine Republicans and only two Democrats opposed; and on the third move twenty-seven Republicans and only three Democrats opposed the proposed reduction. In each of the above cases it was the Democratic vote that secured the reductions of salaries as the vote to reduce them never carried a majority of more than nine votes, and more than half of the voting Republicans voted against each reduction.

The Democrats were not alone, for several newspapers of the Territory also wanted economy of state governmental operation. The Walla Walla Statesman claimed that "high

61 The Minutes, pp. 197-200.

62 Ibid.

salaries" were being provided for state officers because the delegates to the convention wanted these offices, but outside of that there was no reason for such high salaries.⁶³ A Knight of Labor's letter to the editors of the Tacoma Daily Ledger claimed that state expenses as provided for in the constitution would bankrupt the state in two years.⁶⁴

In comparison to other states the salaries the convention provided were neither extravagant nor too stringent. The Territory of Washington had grown tremendously as the railroads opened the Territory. Between 1887 and 1889 territorial revenue had more than doubled because of the number of new inhabitants.⁶⁵ It would probably continue to rise as more and more people came in, and this rise would be sufficient, the delegates to the convention thought, to defray the expenses of the state government the constitution provided.

The issue of salaries again arose over the report of the Judicial Committee.⁶⁶ The convention wanted to do away with that system then in existence whereby the court judges

63 Walla Walla Statesman, July 29, 1889.

64 Tacoma Daily Ledger, September 9, 1889.

65 The Report of the Territorial Treasurer of the Territory of Washington, Session of 1887, shows an income from revenue of \$131,649. The Report of 1889 shows an increase to \$338,470 or an income 2.56 times as large as the income of 1887.

66 Composed of Delegates Turner - Chairman, Dunbar, Gowey, Stiles, Godman, Sturdevant, Griffiths, Mires, Sharpstein, Jones, Kinnear, Weisenberger and Crowley.

received a fee from the litigants on whose cases they judged. To do this they inserted two clauses in the constitution, both forbidding judges from accepting fees. They also decided to make judicial salaries large enough to support the judges without their need to have recourse to taking fees. The Judiciary Committee also felt that high salaries (\$5,000 for Supreme Court Justices and \$3,600 for Superior Court Justices) would attract the best men to judicial positions.⁶⁷

Delegate Willison claimed that lower salaries of \$3,000 and \$2,000 would suffice for now and if larger salaries were needed the legislature should be allowed to provide them.⁶⁸ Rebutting this statement, Delegate Stiles said that the urgency of the matter sanctioned its present settlement, so that men who would be candidates for these offices would know what they were to receive and would not have to lobby in the first legislature for their salaries. Delegate Dyer then proposed a compromise of salaries of \$4,000 for the Supreme Court Justices and \$3,000 for the Superior Court Justices, with power to increase this amount left to the legislature. The motion carried with but few dissenting votes.⁶⁹

The delegates did not think that these salaries were too low or too high, they considered them quite an improvement

67 The Minutes, p. 127.

68 Portland Morning Oregonian, July 20, 1889.

69 Ibid.

over the \$2,000 salaries provided for in the Proposed Constitution of 1878 which also gave the circuit court judges the extra burden of not only holding court in their districts but also of sitting as the State Supreme Court.⁷⁰ Because of these stringent sections the Judiciary Committee had looked elsewhere for a model for their work and chose the California Constitution and the constitution proposed by Mr. Hill that had appeared in the Portland Morning Oregonian on July 4, 1889.

Mr. Hill had recommended three Supreme Court Justices and the Judiciary Committee had accepted the recommendation in their majority report. A minority report signed by Griffitts, Crowley, Sturdevant, Stiles, Dunbar, and Gowey recommended five justices for the Supreme Court.⁷¹ In the debates that preceded the article's passage it became apparent that some delegates thought five justices would be too expensive for the state and not necessary to carry out the small amount of court business the state would have.⁷² The majority of the delegates, however, thought five justices would be necessary now and even more would be required later. This group was large enough to establish a Supreme Court of five justices and to give the legislature power to create more if they were needed.⁷³

70 Constitution of 1878, Article VIII, Section 4.

71 The Minutes, p. 129.

72 Seattle Post-Intelligencer, July 19, 1889.

73 Today there are nine Supreme Court Justices.

The convention did not long debate the Judiciary Committee's recommendation for elected Supreme Court Judges. The majority of the delegates seemed to take it for granted that these justices should be elected, and they also thought that the terms of the Supreme Court Justices should be six years and those of the Superior Court Justices four years. It was claimed in the minor debates on these terms that if the Superior Court Justices were elected every four years, they would be close to the wishes of the people, and a corrupt judge would not be in office for long.

A Democratic delegate, J. J. Browne of Spokane Falls, introduced a measure that would provide minority representation for the Supreme Court. He moved to insert:

If two judges are to be elected, no elector shall vote for more than one candidate therefor. If three judges are to be elected at such election each voter shall vote for two candidates therefor and no more. 74

The Democrats hoped that by this measure they could gain at least two of the five seats in the Supreme Court, despite the fact that they had been the minority party in the territory. The night before this measure was introduced in the committee of the whole, the Democrats met in caucus and agreed to take this stand.⁷⁵

74 Tacoma Daily Ledger, July 19, 1889.

75 Ibid.

On July 18, 1889, before the committee of the whole, they argued that all branches of the government needed minority representation, especially the bench which needed the political wisdom of both parties. Further, they claimed that the minorities must be represented or there is no democracy, and one of the basic principles of a democracy is the distribution of power.⁷⁶ The Republicans answered that minority representation restricted the choice of the electors, and, in this case, would introduce politics into the court. They concluded by saying that if the policy of minority representation was carried to its logical conclusion, every group, no matter how small, would have to have representation on the bench. The Republicans united against this Democratic amendment and defeated it.⁷⁷

Although they desired to keep the State Judiciary Department free from the machinations of political parties, the Republicans voted against the move by Democratic Delegate J. J. Browne to provide a separate election date for all judicial elections. It was claimed by Warner, in support of Browne's amendment, that if separate election dates were provided, the voting populace would not associate the various candidates for judicial seats with the political parties. This move seemed to the Republican delegates to be a

76 Tacoma Daily Ledger, July 19, 1889.

77 Ibid.

Democratic attempt to elect their candidates in the Republican Territory by stressing their individual merit rather than their political associations, and consequently the move was defeated. Democratic Delegate Warner then moved to allow the legislature to change judicial election dates if the legislature thought it would be beneficial, and his move carried. It probably carried because the Republicans thought they could control the legislature if such a move arose.⁷⁸

The sixteenth section of the Judiciary Article provided that,

Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law.

This was contested by Judges Hoyt and Turner and Lawyers Jones, Moore, and Suksdorf. These men believed that judges should aid juries in weighing the evidence and should deliver said juries "from the manipulations of smart lawyers."⁷⁹ Other lawyers, namely, Crowley, Dunbar, Godman, Griffitts, and the two Sullivans, claimed that the section prevented judges from unduly influencing juries. This latter group had enough backing to retain the section as reported.⁸⁰ This section was challenged on the same grounds put forth by Hoyt and Turner, by a

78 Tacoma Daily Ledger, July 19, 1889.

79 Ibid., July 20, 1889.

80 Ibid.

committee studying it in 1935. The committee claimed that it prevented judges from exercising effective control over the conduct of trials.⁸¹

An amendment to the Judiciary Article was proposed by P. C. Sullivan which required that Superior Court Justices inform the Supreme Court annually of "such defects and omissions in the laws as their experience may suggest." He further amended that this information, together with the comments of the Supreme Court be forwarded to the governor. The majority of the delegates approved this amendment which provided a method of correcting both legal procedure and legislative enactments and passed the amendment with but little debate.⁸²

When the Judiciary Article came before the convention for its final approval, there were only six delegates who voted against its adoption.⁸³

The six votes cast against it emanated from those who did not like certain parts of it and who took such heroic methods of expressing their disapproval.⁸⁴

The small opposition to the article leads to the conclusion that the delegates greatly approved it. Delegate Stiles, who

81 The Report of the Advisory Constitutional Revision Committee, p. 25.

82 Tacoma Daily Ledger, July 21, 1889.

83 The Minutes, p. 160.

84 Seattle Post-Intelligencer, July 25, 1889.

later became a Supreme Court Justice, was especially pleased with it.

Stiles claimed that the Judiciary Article defined the jurisdiction of the courts, provided an appellate court with some measure of original jurisdiction and broad powers to correct inferior courts. It also prevented this appellate court from interfering in small money questions. Further, he claimed, it provided for numerous judges to expedite proceedings and it gave each county its own court. He finished this praise of the Judicial Article by claiming that only a few states had these provisions in their constitutions prior to the time of Washington's Constitutional Convention.⁸⁵

85 Theodore Stiles, "The Constitution of the State," Washington Historical Quarterly, Vol. IV, p. 283.

CHAPTER III

THE FRAMEWORK OF COUNTY GOVERNMENT

The convention delegates had many ideas in common regarding the three branches of the state government, but each delegate, it seemed, had his own ideas as to how counties, cities, and townships should be organized and governed.

On July 22 the committee of the whole heard the report of the Committee on County, City, and Township Organization.¹ The first section of the report to catch the interest of the delegates was section two which provided that the site of a county seat could not be changed without a majority vote of the electors of that county.² After the section was read, Democratic Delegate Glascock of Sprague moved to change the word "majority" to "two-thirds majority."

Republican Delegate Kinnear of Seattle seconded the motion. He claimed that by making a two-thirds majority necessary to change a county seat, bitterly contested elections on this issue would be avoided. Delegate Warner agreed with him and said that not only would it reduce bitterness at said

1 Composed of Delegates Stiles - Chairman, Lindsley, Bowen, Glascock, E. H. Sullivan, Jeffs, Griffitts, and Willison.

2 The Minutes, p. 97.

elections, it would also keep the state legislature from interfering in the question.³

Republican Power answered their arguments. He claimed that a simple majority was enough to show that the people wanted the location of a county seat changed. Delegate Stiles, who was on the County Organization Committee, claimed that the reason the provision was inserted was merely to keep the legislature from changing county seats. The majority of the delegates agreed to vote against the amendment.

The reporters that covered the convention for the Seattle Post-Intelligencer, E. B. Piper, and the Tacoma Daily Ledger, L. W. Wall and S. R. Flynn, identified those that favored a two-thirds majority vote requirement to change the site of a county seat as the men who wished to see county seats remain unchanged. Those that wanted to allow a simple majority vote to change a county seat, the reporters said, were those that wanted county seat locations changed. There is no indication in either of the two papers as to what the actual vote on the issue was, so it is difficult to say if this identification was accurate.⁴

The next day in the convention itself after the article had been read for its third and supposedly final time, Delegate Glascock made another amendment requiring a three-fifths

3 Tacoma Daily Ledger, July 25, 1889, p. 4.

4 Seattle Post-Intelligencer and Tacoma Daily Ledger, July 25, 1889.

majority vote of the electors in a county to change the location of a county seat. A vote on this amendment was called and it was approved by a vote of thirty-eight to twenty-six.⁵ The individual voting on this section showed personal choice rather than sectional or political influence.

Section three of the County, City, Township Article would have been accepted with but minor amendments if it had not been for the delegates from King County. One sentence in the section particularly raised their ire.

There shall be no territory stricken from any county unless a majority of the voters living in such territory shall petition therefor. 6

A group of King County residents living on a strip of land adjacent to Pierce County wanted their land to be attached to Pierce County. They had sent numerous petitions to the territorial legislature and had paid the expenses of a large delegation which was to present their claims to that body. The people of King County did not want to lose the section from their county so had used their influence to stop the legislature from granting the section's wish.⁷

It seemed to the delegates of King County that the clause in section three that pertained to districts changing counties had been framed with this specific area in mind. The

5 The Minutes, pp. 168-169.

6 Ibid., pp. 147-148.

7 Tacoma Daily Ledger, July 25, 1889.

King County delegates tried various schemes to amend the article without showing why they wanted it amended.

Delegate Sohns of Vancouver was urged by his Seattle friends to move to change the word "territory" to "county" in an effort to defeat the purpose of the section. This amendment would have made it almost impossible for a small territory to change counties, for what small section of a county could get a majority vote of the county in a severance petition?⁸ Delegate Turner claimed that as long as the eventual change was left to the legislature it didn't matter how many petitioned, the legislature would grant only what it wanted to grant, so the motion made little difference. Sohn's amendment lost, and further debate on the subject was postponed for a day.⁹

When this section came up for discussion the next day, Kinnear of Seattle moved to strike it, claiming that it was not fair to leave such an important question to such a small number of people. Seattle Delegate Durie seconded the motion and said that petitions were not honest. P. C. Sullivan of Tacoma claimed that the clause was fair and an honest means of informing the legislature that a change of counties was desired.

8 Ibid.

9 Ibid.

Dr. Minor, a delegate from Seattle, arose and claimed,

This provision was inserted for outrageously selfish ends ... I have had with my fellow citizens occasion not long since to bow my head in gratitude for the generosity of another county [reference to the generous help that Tacoma gave Seattle after the Seattle fire]. I see in this sentence, a purpose which makes me believe that when they sent flour and provisions, some at least - I acquit a large majority of them of ulterior motive - they fed us as a physician feeds a patient with chloroform, to dismember us. 10

Then E. H. Sullivan arose and said, "If I had been for striking the section, after Minor's speech I wouldn't be."¹¹

Later the vote on whether to strike the clause or not was called, and the move to strike was lost, fifty to seventeen. The six Seattle and eleven sectionally scattered delegates voted for this move to strike.¹² Following this, a vote was called to change the number of electors in a region that could petition for a change in county, from a simple "majority" to a "two-thirds majority." This vote saw seventeen delegates join the six Seattle delegates in their vote, but still the measure failed by a vote of forty-nine to twenty-three.¹³

Section four of the County, City and Township Organization Article readily passed. Not until years later

10 Tacoma Daily Ledger, July 25, 1889.

11 Ibid.

12 The Minutes, p. 180.

13 Ibid., pp. 180-181.

was it seen that one of its clauses would force large and small counties to have the same system of government. The article established a system for organizing county and township governments, and it stipulated that all county governments "shall be uniform throughout the state." Men who have studied the results of this last clause have said,

The form of county government has remained unchanged because, unfortunately, it was written into the state constitution.... This provision requires the same form of government to be set up for King County, with its population of 400,000, and for Skamania County with less than 3,000 population. 14

Delegates from the small counties and cities and thinly populated sections of the territory believed that county and city officials should be paid by fees rather than by salary. They did not want to pay an official for time not spent in his official capacity. They thought that an officer should receive pay only for his official acts. Besides, they added, to provide salaries for city and county officers would be to burden small counties and cities with unnecessary expenses and hence unnecessary taxes, while payment by fees would serve the purpose just as well.

In the convention this group won one main concession. In section five of the County, City and Township Organization Article they secured a provision allowing county officials to

14 Report of the Advisory Constitutional Revision Committee,
pp. 7-8.

be paid by fees provided that there be a

... strict accountability of such officers for all fees which may be collected by them, and for all public money which may be paid to them....

One clause of section ten of the City Organization Committee Report, which provides for the incorporation of municipalities, was contested.

Any city containing a population of twenty-five thousand inhabitants or more shall be permitted to frame a charter for its own government consistent with and subject to the constitution and laws of the state. 15

The opposition to this centered around the words "twenty-five thousand inhabitants." J. Z. Moore of Spokane Falls, Weir of Port Townsend, T. M. Reed of Olympia, and J. J. Browne of Spokane Falls favored a motion to change those words to "five thousand inhabitants." This idea was forwarded by men who did not believe their home cities were large enough to get home rule if a population of twenty-five thousand was required. The motion carried.¹⁶

The Republicans divided their vote on this issue, while the Democrats were almost solidly for it.¹⁷ It appeared that the big cities, the center of Republican strength, had

15 The Minutes, p. 149.

16 Ibid., pp. 181-182.

17 Ibid., p. 182. The vote did not follow sectional interests.

lost in their attempt to get home rule only for themselves and to keep it from the small cities. Then Delegate Henry of Olympia moved to leave the entire question of "home rule" to the legislature instead of constitutionally providing for it. His motion carried by a vote of forty-two to twenty-nine.¹⁸ Of the sectional and political factions the eastern delegates were the strongest backers of this move to leave the question to the legislature. It seemed that they desired to prevent the large cities from gaining home rule.

Then Democratic Delegate Griffitts of Spokane Falls moved to add to the constitution the original provision for home rule for the cities, but he amended to reduce the original requirement of twenty-five thousand inhabitants to twenty thousand, and his motion carried.¹⁹ A few years after the convention adjourned, one of its delegates, Mr. Stiles of Tacoma, claimed that the special interests of the big cities controlled the convention when this last amendment passed. He said that the city men favored it, and the country men didn't want to hurt the feelings of their city cousins, so they voted for it too.²⁰

When Delegate Stiles said this, he could look at the convention with a critical eye, for he had become a Justice of

18 Ibid., p. 183.

19 Ibid.

20 Theodore Stiles, "The Constitution of the State," Washington Historical Quarterly, Vol. IV, p. 284.

the state's first Supreme Court. He claimed that this provision granting "home rule" was a failure. It had cost some cities \$50,000 before they secured "home rule" and it often took a Supreme Court decision to determine if all conditions of the section were fulfilled.²¹

While Washington was the third state in the Union to make provisions for local self-government, the provision for home rule that the convention adopted allowed the state legislature as much control over the cities as the territorial legislature had ever had.²²

In 1888 and 1889 several disastrous fires had occurred in the Territory, the cities of Seattle, Ellensburg, and Colfax had suffered severe damage from these fires. To raise money to rebuild these cities necessitated the sale of bonds by the cities, thus placing them in debt. New roads, sewers, street-lights and other facilities were needed by these and other cities, and to secure them necessitated the contracting of debts. The question of limiting the indebtedness of cities was one question the convention had to solve before the articles establishing county and city government and organization were complete.

21 Ibid.

22 McDonald, American State Government and Administration, pp. 259-261.

On July 10 a letter from the N. W. Harris Company, a Chicago banking firm, was read to the convention.²³ In that letter it was claimed that the company had bought all of King and Spokane Counties' bonds. Because the company was interested in receiving payment on these bonds, it wanted the convention to limit municipal and county indebtedness to 5 per cent of the taxable property in cities and counties. The company felt that by establishing a limit on city indebtedness there would be little chance for the cities to go bankrupt and their investment would be protected.

On July 12 Delegate Durie informed the Mayor of Seattle that a limit of 5 per cent for city indebtedness was planned by the Committee of State, County and Municipal Indebtedness.²⁴ Mayor Moran immediately called a city council meeting.²⁵ This council decided to send a delegation to Olympia to plead the cause of Seattle's need to incur indebtedness of over 5 per cent if Seattle was to rebuild. Thomas W. Prosch of the Seattle Chamber of Commerce, W. R. Niesz of the Seattle City Council, T. E. Jones and Lyman Elmore, two Seattle businessmen, were chosen to plead the city's cause. A petition from the city council was sent with them.²⁶

23 Tacoma Daily Ledger, July 11, 1889, p. 4.

24 Composed of Delegates Browne - Chairman, Blalock, J. M. Reed, Durie, Coey, Hungate, Sturdevant, Fairwether and Fay.

25 Seattle Post-Intelligencer, July 13, 1889.

26 Ibid., July 17, 1889.

Delegate Durie of Seattle who was on the Municiple Indebtedness Committee arranged for his committee to hear the claims of this delegation. Both Durie and Dr. T. T. Minor, another Seattle delegate, backed the claims of the Seattle delegation. Delegate Warner of Colfax, and F. A. Bettis of the Spokane Falls City Council, also asked to have the limit on municiple indebtedness raised. At first these delegations asked the committee for unlimited indebtedness. Then Delegate Minor suggested that a limit of 10 per cent of all taxable property in the city was suitable to the cities and would not prevent the raising of enough money to rebuild the stricken cities.²⁷

This change of request from unlimited indebtedness to a limit of 10 per cent of the value of all taxable property in the cities impressed the Municiple Indebtedness Committee.²⁸

The attitude taken by the Seattle people so favorably impressed the committee that it not only decided to grant the petition but lower the condition of the number of voters required to incur indebtedness from two-thirds to three-fifths. ²⁹

The reduction of the number of voters required to approve increased municipal indebtedness and the increased indebtedness limit of 10 per cent of the taxable property in the city was

27 Ibid.

28 Seattle Post-Intelligencer, July 17, 1889.

29 Ibid.

readily approved by the committee of the whole. Many of the delegates had seen the terrible damages of the first that had destroyed these cities, and they could well imagine the money that would have to be raised to rebuild them and so this section was readily approved.³⁰

When the question of city indebtedness was thus solved the convention turned to the question of the lending of county credit to corporations and the investment of county funds. This question was not only concerned with the welfare and financial stabilization of the counties but was closely related to the rivaling railroad interests. This issue provoked one of the major debates in the convention and "stimulated more lobbying than almost any other proposal."³¹

30 The Minutes, pp. 222-223. Seattle newspapers which had seen their city gutted by fire were pleased with this section, but not so with the Spokane Falls Review, even before that city was fired an editorial of July 28, 1889, said that Spokane would have to have an election to put in another foot of sewer, as the indebtedness limit had already been reached. It concluded, "This kind of sandlot and demagogue legislation will cripple and destroy the energies of this city. For such unprecedented narrow-minded silurianism we are particularly indebted to three classes at Olympia; First, the smooth-faced politicians who expect to gain favor with the "oi polloi" [sic] by that kind of demagogism; second, the lobby, paid and supported by eastern bankers who expect to make Washington Territory bonds which they now hold, double gilt-edged if they can prevent the issue of any more, thus realizing several hundred thousand dollars in premiums; third, Hons. J. J. Browne and H. W. Fairweather, who, being bankers themselves, sympathize more with the desires of bankers than with the wishes of the people. These two men aided by the paid lobby of the bankers have succeeded in forcing this outrage upon the growing cities of the new state...."

31 Airey, A History of the Constitution, p. 481.

The background of this question was partially summed up in the Seattle Post-Intelligencer which pointed out that in 1887, G. W. Hunt, President of the Oregon and Washington Territory Railroad Company, told the people of Walla Walla that he would build a line connecting Walla Walla with the Northern Pacific Railroad system, and he gave specific pledges as to freight and passenger rates. He would do this, he had said, for a subsidy of \$100,000. The people of Walla Walla desired this connection and subscribed to about four fifths, or \$80,000, of the amount.

Then in May of 1889 Hunt offered to extend the line to Dayton and Waitsburg and into the Grand Rond Valley. He said he would do this and release the subscribers to the first subsidy of \$250,000 in bonds bearing 5 per cent interest and payable in thirty years.³² Many Walla Walla citizens, continued the Post-Intelligencer, were willing to let the county be indebted if they themselves were released from their original subscription. Hence, Hunt and these Walla Walla voters wanted the Constitutional Convention to grant a provision allowing counties to pledge their credit.

What the Post-Intelligencer did not mention was that Hunt was affiliated and, at this time, was working with the Northern Pacific Railroad. Nor did it mention that the Union Pacific Railroad and the affiliated branch, the Oregon Railway

32 Seattle Post-Intelligencer, July 25, 1889.

and Navigation Company, which had built and were planning to build more lines in Walla Walla County, did not want competition from Hunt and/or the Northern Pacific Railroad. It would be to the Union Pacific's benefit if the subsidy scheme was defeated in the convention, for it was doubtful if the Northern Pacific would expend its own money to build these proposed lines.³³

In the middle of June, Henry Villard and the Union Pacific Railroad Company gained control of the Oregon Railway and Navigation Company despite the objections of the Northern Pacific.³⁴ In a speech delivered to the Oregon Railway and Navigation Company stockholders, Villard declared his object was to divide Oregon and Washington between the Northern Pacific and the Union Pacific to give each

... the territory which properly belonged to it; and to exclude the other from that territory and prevent the building of more railroads than seems proper to me and to my associates. ³⁵

The Walla Walla Weekly Union claimed that the Oregon Railway and Navigation Company had forced the wheat farmers of Eastern Washington to receive five cents a bushel less for their wheat than was being paid other farmers. The paper

33 Airey, A History of the Constitution, pp. 481-487.

34 Walla Walla Weekly Union, June 22, 1889.

35 As quoted in the Walla Walla Weekly Union, July 20, 1889.

claimed the inequitable and discriminatory rate policy of this company penalized the farmers of the area.³⁶

To stop unfair practices such as this, the Weekly Union felt that a line competing with the Oregon Railway and Navigation Company was needed in the southeast section of the territory. The paper claimed that Villard, of the Union Pacific, had tried to buy out Hunt in an effort to eliminate competition for the O.R.&N.Co., but had not been successful.³⁷

The Walla Walla Weekly Union also insisted that prominent lobbyists from the Oregon Railway and Navigation Company were present at the convention.³⁸ And, according to a letter from the convention's printer, Thomas Cavanaugh, to ex-Governor Ferry, the Northern Pacific lobbyists and N. H. Owings who appears to have had the interests of the Northern Pacific in mind were also present.³⁹

A delegation from Walla Walla composed of P. B. Johnson and D. W. Smith asked the Committee on County Indebtedness to agree with the Hunt subsidy plan by allowing counties to lend their credit.⁴⁰ Citizens of Klickitat County also petitioned

36 Walla Walla Weekly Union, July 6, 1889.

37 This claim was substantiated by Villard himself in his speech to the holders of O.R.&N.Co. stock. (Walla Walla Weekly Union, June 22, 1889.)

38 Ibid., August 24, 1889.

39 Thomas E. Cavanaugh to E. P. Ferry, July 7, 1889, Ferry Documents.

40 Tacoma Daily Ledger, July 14, 1889.

for such a clause in the constitution.⁴¹ Five of the members of this committee agreed to include in their report to the convention a provision that allowed the counties to lend their credit provided that two thirds of the voting taxpayers in a county showed, by ballot, that they agreed to the loan.⁴² Three of these committee members who proposed this majority report were from Eastern Washington and two were from Western Washington. The other four members of the indebtedness committee, Browne from Spokane, Coey from Rockford, Fairweather from Sprague, and Hungate from Pullman, all Eastern Washington, drew up a minority report which provided that no county could lend its credit for any reason.⁴³

On July 31 the majority and minority reports were read to the committee of the whole and debates on the subject started immediately. Not once was there a mention of the Union Pacific Railroad or of the Northern Pacific, but Hunt's railroad was mentioned often, as was the Oregon Railroad and Navigation Company. The entire question was handled almost exclusively by men from east of the Cascades. In the debates seven Easterners supported the majority report and ten backed the minority report, while only seven Westerners even entered the debate. Delegates Dunbar from Klickitat County and

41 Spokane Falls Northwest Tribune, July 24, 1889.

42 The Minutes, p. 174.

43 Ibid.

Blalock and Crowley from Walla Walla County made it evident to all, by their speeches, that Klickitat and Walla Walla Counties wanted competition for the Oregon Railway and Navigation Company lines that ran through their counties.⁴⁴

The arguments favoring the adoption of the majority report, which would permit Walla Walla and other counties to subsidize railroads, followed the general lines that the welfare of the counties was the only issue involved. When the minority and majority reports were presented to the committee of the whole in the afternoon of July 31, Delegate Dunbar moved to adopt the majority report which would, in effect, allow Walla Walla to subsidize the Hunt railroad. Delegate Crowley of Walla Walla, who had previously been one of the group that was to prepare the agreement between Hunt and the people of Walla Walla,⁴⁵ seconded Dunbar's motion. He claimed, as he seconded it, that the people of Walla Walla would greatly benefit if a railroad that competed with the Oregon Railway and Navigation Company was constructed. He further stated that there were enough provisions in the majority report to safeguard the people of Walla Walla adequately and to keep them from going too far in debt.⁴⁶

44 Seattle Post-Intelligencer, August 2, 1889; Tacoma Daily Ledger, August 2, 1889.

45 Walla Walla Weekly Union, May 11, 1889.

46 Tacoma Daily Ledger, August 1, 1889.

Delegate Weir of Port Townsend pointed out the evils of subsidies. He claimed that the people of the State of Missouri had suffered greatly because they had subsidized certain railroads in their state. The entire cost proved to be more than the original subsidy called for and the benefits received in no way repaid the investment. Delegate Griffitts of Spokane Falls said that although he felt sorry for the people of Walla Walla and Klickitat Counties, he did not feel that a county subsidy was the proper means of alleviating their condition. Before Griffitts finished, he pointed out that the reason Delegate Dunbar wanted the convention to let counties subsidize railroads was that Dunbar was the President of the Pasco, Goldendale, and Columbia Valley Railroad Company which also wanted a subsidy to enable it to build railroads in Klickitat County.⁴⁷

As it was late in the afternoon the committee of the whole arose without voting on Dunbar's motion to adopt the majority report. The next morning the debate started over again. Delegates Sturdevant of Dayton, Prosser of North Yakima, and Stiles of Tacoma claimed that the taxpayers of a county could easily redeem the subsidy bonds if a competing railroad was brought into the counties involved, for they would save money through reduced transportation rates. Delegate Dunbar admitted that he was President of a railroad

⁴⁷ Ibid.

company and that he favored county subsidies because that was the only way he could see to raise money to build a railroad in his own (Klickitat) county.⁴⁸

Delegate Buchanan cited examples of how railroad officials had induced people into disastrous schemes only to leave them bankrupt and without the railroad they had subscribed to have built. Comegys, Griffitts, Truner, J. Z. Moore and Browne sympathized with the people of Walla Walla but did not think a county subsidy was the remedy.⁴⁹

Delegates Power of LaConner and Stiles of Tacoma tried to compromise. Power moved to amend the majority report to read that subsidized railroads could not be sold or combined with others. His motion lost. Stiles moved that a county subsidy be only for public or "quasi-public" reasons, but his motion lost by a vote of thirty-four to twenty-seven.⁵⁰ The committee of the whole then rejected Dunbar's motion to adopt the majority report. The move to adopt the minority report which forbade county subsidies then carried.⁵¹

48 He also said that "gentlemen have approached him whose pockets were plethoric with O.R.&N.Co. stocks." Tacoma Daily Ledger, August 2, 1889.

49 Ibid. The Seattle Post-Intelligencer of August 1 and 2, 1889 also carried the texts of these arguments.

50 Tacoma Daily Ledger, August 2, 1889.

51 Ibid.

The committee of the whole then went into convention. There the decision of the committee of the whole to strike the majority report and to adopt the minority report was approved by a vote of forty-nine to twenty-five.⁵² The Republicans and Democrats were divided in their votes, as were the delegates from west of the mountains. Of the thirty-five delegates from east of the Cascades, twenty-five voted to accept the minority report which forbade county subsidies, and ten voted to reject it.

From these figures it can be seen that political parties were not involved in the question but that sectional interests were.⁵³ This could be seen even more clearly in the voting that followed Delegate Crowley's move on August 17. Crowley moved, on this date, to allow the Counties of Columbia, Klickitat, Kittitas, Walla Walla and Yakima to grant subsidies of less than 4 per cent of the property valuation of the County if they did so before January 1, 1890.⁵⁴ He was supported in this move by only four other Eastern delegates, the rest voted against it.⁵⁵ The vote on the final approval of the article proved that the Eastern Washington delegates who cast twenty-four of their thirty-five votes against the county subsidy

52 The Minutes, p. 223.

53 Airey, A History of the Constitution, p. 486.

54 Tacoma Daily Ledger, August 18, 1889.

55 Ibid.

issue were not in harmony with their Walla Walla colleagues.⁵⁶

The Seattle Post-Intelligencer and the Portland Morning Oregonian were completely against the subsidy scheme. The Post-Intelligencer was against it because it thought that the Northern Pacific Railroad had enough power and lands in the state already.⁵⁷ The Morning Oregonian, in the stronghold and center of Villard's Northwest activities, was against the scheme because the paper did not want Portland to lose the trade that would be carried by a competing road to the Puget Sound area. However, they claimed in print that the subsidy plan was vicious and would not redound to the good of the counties.⁵⁸

The Walla Walla Weekly Union was the subsidy scheme's strongest supporter. The paper's editor, P. B. Johnson, traveled to Olympia and he himself reported on the convention for his paper. This also gave him a chance to lobby for the scheme and to see what was behind the delegates' attitude when they rejected the plan. The Seattle Post-Intelligencer claimed that the subsidy principle was rejected because of the hostility of the people of Washington to the Northern Pacific Railroad.⁵⁹ P. B. Johnson claimed that the county subsidy

56 The Minutes, p. 225. The vote was forty-eight to twenty-four.

57 Seattle Post-Intelligencer, August 2, 1889.

58 Portland Morning Oregonian, July 16 and 23, 1889.

59 Seattle Post-Intelligencer, August 2, 1889.

principle was defeated because of the activity of the Union Pacific Railroad, Governor Moore, and the hostile attitude of the delegates from Spokane, Stevens, Whitman, Lincoln, King, and Jefferson Counties.

When I arrived here [in Olympia] on the third of July, I found Hon. W. P. Keady, of portland, the salaried 'convincer' of the O.R.&N.Co., at the ear of the delegates. He remained several days, but kept out of the sight of the general public. Then I found Governor Moore had been and was busy, assisted by his expert counselor, H. W. Fairweather of Sprague, one of the delegates and an aide-de-camp on the staff of the Governor. 60 Next I found another aide of his excellency, E. H. Morrison. Then J. B. Mountgomery, a Portland capitalist who usually 'stands in' with the O.R.&N.Co., put in an appearance. Then the Oregonian began to thunder and the Seattle Post-Intelligencer to howl at the subsidy scheme. I then found Paul Schulze dipping his spoon in and helping to down Walla Walla....

When it is remembered we had to fight the solid delegation of seven from Spokane, two from Stevens, six from Whitman, three from Lincoln, three from Jefferson, seven of the nine from King, besides a divided delegation from Columbia and Kittitas - nearly half of the convention - all of whom were acting in their opposition, the wonder is that we succeeded in obtaining twenty-five votes for the general proposal to allow counties to grant subsidies.

The proposal to authorize Walla Walla County to issue bonds in aid of the Hunt road being dead and buried let us not linger over its grave but turn to live topics. 61

60 "Miles Conner Moore ... has used all the power he possesses with the delegates to defeat the efforts of the people of Walla Walla to secure release from the bonds of the O.R.&N.Co., a corporation he claims that he is bound to protect, because he sold to it, for a great price, the narrow gauge road to Dixie and Dudley." (Walla Walla Weekly Union, August 10, 1889, p. 1.)

61 Walla Walla Weekly Union, August 24, 1889.

Although the County Organization Articles had been used for a battleground by the railroads, their adoption allowed the convention to turn to "live topics."

CHAPTER IV

PERTAINING TO THE BALLOT

One of the liveliest topics that faced the convention was women's suffrage. Until the year the convention convened this question had been the subject of many debates throughout the territory and country. Several legislative measures which granted suffrage had been passed by the territorial legislature, but these were ruled invalid by the territorial courts. Thus the question of suffrage was still a live one.

In 1873 the legislature had granted suffrage in school elections. In 1883 the legislature extended suffrage, by implication, to all elections.¹ In 1886 the legislature made this right explicit and also made it legal for women to serve on juries.² In 1887 Judge Turner of Spokane Falls, in a court ruling on an appeal which arose from the fact that women had served on an earlier jury, ruled that the measure which granted suffrage and jury duty to women was not valid.³ In

1 Session Laws of Washington Territory, 1883, p. 39.

2 Ibid, 1885-1886, p. 113.

3 Jeff. J. Horland vs. Territory of Washington, Feb. 3, 1887, Washington Territory Reports, "Cases Determined in the Supreme Court," 1887-1888, Vol. 3.

1888 the territorial legislature again reaffirmed suffrage but not jury duty.⁴ Once again the measure was taken to court.

In the lower territorial court Judge Hoyt, a suffragist, ruled that there was nothing in the Organic Act or the laws of the country that prohibited the legislature from granting equal suffrage, and so the law granting suffrage in Washington Territory was held to be valid.⁵

The case was immediately appealed to a higher territorial court, a court in which Judge Hoyt, who had declared the lower court's decision, could not sit. In this higher court Judges Turner and Langford claimed that women's suffrage was not in accord with the laws of the United States and hence the suffrage law was not valid in the territory.⁶

In 1889 after the Enabling Act was passed, the suffragists set up a strong lobby in Olympia with the express purpose of getting the delegates to the convention to include suffrage in the constitution. The people in this suffrage lobby were quite pleased to see the names of Edward Eldridge, Judge Hoyt, R. O. Dunbar, and other well-known suffrage advocates elected

4 Electors, Qualifications of, Chapter LI, "An Act Prescribing the Qualifications of Electors in the Territory of Washington," Laws of Washington Territory, 1887-1888, p. 93.

5 As related in Stella E. Pearce, "Suffrage in the Pacific Northwest," Washington Historical Quarterly, Vol. III, No. 2, p. 109.

6 Nevada M. Bloomer vs. John Todd et al, August 14, 1888, Washington Territory Reports, "Cases Determined in the Supreme Court," Vol. III, pp. 599 et seq.

to the convention. They felt that these delegates could greatly advance the cause of women's suffrage. They deplored the presence of Judge Turner in the convention.⁷

All the delegates to the convention knew that equal suffrage, "the burning question of the age [would] delay the completion of work."⁸ Some delegates, as was said, were suffrage advocates, others hesitated to grant constitutional suffrage either from a direct disbelief in it or from fear that if suffrage was constitutionally granted, the territorial populace would not ratify the constitution.

One delegate who preferred to remain anonymous, and did, said it was silly even to think about constitutional suffrage. He added,

Well, about nine-tenths of the women would be influenced in their vote by a class of leaders - gentlemen of the cloth you might call them - and I do not think that influence would redound to the good of the country. ⁹

But other delegates, Eldridge for one, said they would do all they could for women's suffrage and would "fight for women's rights until the last horn blows."¹⁰

7 The Portland Morning Oregonian, July 5, 1889, and the Tacoma Daily Ledger of the same date make this quite clear.

8 Tacoma Daily Ledger, July 3, 1889.

9 Ibid.

10 Ibid.

Judge Hoyt's suffrage advocacy almost cost him the convention's presidency. Members of Hoyt's own party, the Republican party, felt that if he was elected, women suffrage would certainly be constitutionally guaranteed. Consequently, several Republican delegates deserted their party and voted for other candidates.¹¹ But Hoyt picked up enough Democratic votes to be elected.¹² Resentfully, one of the deserting Republicans said,

He [Hoyt] is a women's suffrage advocate. Women's suffrage can do us no good but may do great harm ... at present the women suffragists alone are jubilant over the nomination of Hoyt, which they regard as a substantial victory.¹³

Other delegates did not think Hoyt's election was a triumph for the suffragists. Judge Eldridge was greatly discouraged by the attitude of the delegates, who, he claimed, wanted to place this vexing question before the people in a separate act. He thought Hoyt as president could do little to change their minds.¹⁴

11 The Republicans who bolted party lines later said that they were satisfied as to the outcome of the elections because the Democrats were now partly responsible for the election of a women suffrage advocate. (Tacoma Daily Ledger, July 6, 1889.)

12 For more details on this election see above, Chapter Two.

13 Tacoma Daily Ledger, July 5, 1889.

14 Ibid., July 4, 1889.

The suffragists hoped to gain one of three things from the convention: constitutionally guaranteed suffrage, the suffrage question left to the legislature, or the question submitted to the people in a separate article at a time when such other questions as prohibition and the constitution itself were not to be submitted. Two factors dimmed their hopes and made their visions seem doomed to failure.

Mr. Hill in his proposed constitution for the Territory of Washington claimed that if suffrage was guaranteed constitutionally, it could not be easily undone if it proved to be impractical.¹⁵ As Mr. Hill's proposed constitution was referred to extensively and was considered a nearly perfect model, the lack of any grant of women's suffrage in it was considered a setback by the suffragists. The second event that set back the hopes of the suffragists was President Hoyt's committee appointments. The suffragists believed that their fellow-traveler, Hoyt, would place Delegate Eldridge, another sympathizer, as chairman of the committee on election and elective rights. But Hoyt did not even place him on this committee, and he gave no reason for not doing so.¹⁶ This exclusion of their hard-working advocate seemed to the suffragists a blow aimed directly at them.

15 Portland Morning Oregonian, July 4, 1889.

16 Tacoma Daily Ledger, July 10, 1889.

Many of the petitions that flooded the convention from the people of the territory asked for women's suffrage.¹⁷ There were a few petitions asking that equal suffrage should not be granted. Petitions ceased to come in such numbers, however, when the Judiciary Committee announced on July 15 that the convention had the power to submit separate articles to the people for ratification. The people knew that this was the method the convention wanted to use in treating this vexing question, and they rightly believed, now that it was proved legal to do so, that this method would be used.¹⁸

17 Quentin S. Smith in An Index to the Minutes of the Convention compiled a list of these petitions. All references are to The Minutes.

F. G. Hendricks, and 594 other men and 414 women. (p. 83)

William West and others. (p. 83)

Francis Miner of St. Louis. (p. 113)

A. M. Sweeney, and others of Walla Walla. (p. 136)

H. J. Besks and others. (p. 137)

Mr. Gilliam and others. (p. 137)

Mary T. Jones and others. (p. 137)

C. C. Barrow and others. (p. 137)

W. V. Anders and others. (p. 138)

W. P. Stewart and others. (p. 138)

Lucinda King and others. (p. 138)

L. W. Sturdeal and others. (p. 138)

P. J. Flint and others. (p. 138)

Mrs. McCoy and 26 teachers. (p. 138)

Dr. A. K. Bush and 94 others. (p. 144)

S. M. Ballard and 151 others. (p. 144)

George E. Cline and 163 others. (p. 145)

L. M. Lord and 82 others. (p. 145)

C. F. Wookcock and 120 others. (p. 206)

Ninety-three voters of Buckley. (p. 368)

Gerald McCoy, and tax paying women. (p. 368)

18 Tacoma Daily Ledger, July 16, 1889.

Several speakers addressed the Election and Elective Rights Committee. Miss Hindman of Pennsylvania spoke in favor of suffrage on July 17. The next day Mrs. M. L. Hidden of Vancouver and Mrs. E. L. Saxon of Whatcom County addressed the same committee.¹⁹ On July 25 Judge Henry B. Blackwell spoke before a small group presided over by Judge Hoyt and attended by, among others, about ten delegates. His speech favoring women's suffrage ended with the words, ". . . ignorant negroes are granted greater privileges than intelligent white women."²⁰

One newspaper ran a survey to note the delegates' views on this question. It found that a majority of the delegates preferred to submit the question to the people in a separate article. One large minority group favored granting women's suffrage constitutionally, and another minority group opposed it unequivocally.²¹

On August 8 the committee of the whole heard the report of the Election and Elective Rights Committee.²² Then, following the convention's procedure, the report was set aside for one day, but business already on hand postponed debate on the report for four days. On August 12, as the reader began

19 Ibid., July 19, 1889.

20 Ibid., July 26, 1889.

21 Ibid., July 29, 1889.

22 Composed of Delegates P. C. Sullivan - Chairman, J. Z. Moore, Dyer, Glascock, Travis, Burke, and Neace.

to give the report its second reading, thirty-nine members of the committee of the whole, not caring for the ensuing propaganda, left the hall. When the reader finished reading section one, Delegate Eldridge took the floor and moved to strike the word "male" from that clause which read, "All male persons of the age of twenty-one" ²³

Eldridge then asked the delegates to support democracy in the constitution. He reminded them of their campaign pledges to grant equal suffrage. He claimed the Territorial Supreme Court's decision invalidating the legislature's gift of the ballot to women was neither final nor just. He gave reason after reason why the word "male" should be struck. ²⁴ For a full fifty minutes he spoke in favor of his own amendment, but all to no avail. When he finished, the absent members returned and the reassembled committee of the whole voted against his amendment. ²⁵

Later that day the convention heard the section read for its third and final time. Eldridge again moved to strike the word "male" from the first clause, and again his motion lost by a vote of fifty to eight. ²⁶

23 Tacoma Daily Ledger, August 13, 1889.

24 Quentin S. Smith, An Index to the Minutes of the Convention, p. 63.

25 Tacoma Daily Ledger, August 13, 1889.

26 The Minutes, p. 344.

Section two of the same article aroused a bitter debate before the convention approved it. The section read,

The legislature may provide that there shall be no denial of the elective franchise at any school election on account of sex. 27

Delegate Dunbar moved to strike out the words "at any school election." This was a move to have the question of women's suffrage left to the legislature. It was seconded by delegates Cosgrove, Prosser, and Eschelman. They argued, somewhat illogically, that the constitution would be rejected by the people if it included a clause granting women's suffrage, consequently, the question should be left to the legislature which would know the people's desires and would give them suffrage if they wanted it.

Delegates Godman, Stiles, and Griffitts claimed that this move would give the legislature too much power and would enable that body to force women's suffrage on the people even though the people might not want it. When the vote was taken, Dunbar's amendment lost by a vote of thirty-eight to eighteen.²⁸ In convention the next day Dunbar again moved to strike the words, "at any school election." His motion lost again, this time by a vote of forty-three to eighteen. The eighteen votes cast in favor of Dunbar's amendment came from

27 The Minutes, p. 302.

28 Tacoma Daily Ledger, August 13, 1889.

seven Democrats, one Independent, and ten Republicans.²⁹

After this vote, the convention adopted the section.

One other section of the article concerning women's suffrage delayed the convention's work, and that was section nine which contained the provision of submitting the question to the people in a separate article. The Election and Elective Rights Committee included this in their report and provided that its submission date was to be one year after the constitution was submitted, that is, 1890.

In the debates that followed the reading of this section before the committee of the whole, three factions became apparent. One faction still wanted the question of suffrage left to the legislature. The second faction wanted the separate article submitted to the people at the same time the constitution was to be submitted. The third faction, which included the Election and Elective Rights Committee that had framed the section, wanted a year's intervention between the two submission dates.

Those delegates that wanted the question left to the legislature continued their argument that if women's suffrage could not be granted constitutionally because the people would not accept such a constitution, the question should be left to the legislature which would grant suffrage if and when the

29 The Minutes, p. 344.

people wanted it.³⁰

The second faction was represented by Delegate Godman who said he and other delegates had pledged to submit a separate article at the same time the constitution was submitted. Delegate Glascock backed these words of Godman and also claimed that any separate article would have to be submitted concomitantly with the constitution if the provisions of the Enabling Act were to be fulfilled.

The suffragists, the third faction, knew that the majority of delegates wanted to submit the question to the people. Consequently, they now worked to have the question submitted at a time when other articles were not being voted on, especially the article on prohibition. One delegate said,

We don't want the question submitted to that class of voters who could be influenced by a glass of whisky - the day before the election, but only to the votes of the people who have interest enough for or against this particular question to come out and vote upon it one way or another. 31

(Delegate Godman moved to amend the report of the Elective Rights Committee by changing the date of submission

30 Stella Pearce, "Suffrage in the Pacific Northwest," Washington Historical Quarterly, Vol. III, No. 2, p. 112. This faction knew that the territorial legislature had been induced to grant equal suffrage twice, and it would be easier to get the state legislature to grant it again than it would be to get the people to approve it in a separate article. For when the suffrage article had been presented to the people along with the Constitution of 1878, the suffrage article had been defeated by a vote of more than three to one against it.

31 Portland Morning Oregonian, August 13, 1889.

from 1890 to 1889. The vote was called on this and the amendment passed by a thirty-one to twenty-six majority.³² Delegate Eldridge then moved to allow women to vote on this separate article but his amendment lost.³³

The committee of the whole then adjourned to meet in convention and Eldridge again moved to let women vote on the separate article. Again his motion lost, this time by a vote of forty-three to eighteen.³³ The convention disregarded Glascock's statement that a separate article had to be submitted at the same time the constitution was submitted, and, reversing the action of the committee of the whole, agreed to an amendment proposed by Republican Delegate Dyer, to change the submission date back to 1890. The vote was close, however, only thirty-one to twenty-nine, and closely followed political lines.³⁴

32 Tacoma Daily Ledger, August 13, 1889.

33 The Minutes, p. 345.

34 The suffragists wanted the question submitted in 1890 and not in 1889, two amendments were made, one proposing 1889, and the other proposing 1890. Figures on the former are not available. The vote on the latter tends to show that it was mainly the Republican party that conceded the most to the suffragists and not the Democratic party as the Seattle Post-Intelligencer and the Tacoma Daily Ledger of August 16 claimed.

AMENDMENT PROPOSING 1890

	For	Against	Not Voting	Total
Republican	27	8	8	43
Democrat	2	19	7	28
Independent	<u>2</u>	<u>2</u>	<u>0</u>	<u>4</u>
Total	31	29	15	75

Later that day when many Republicans were absent, the Democrats and six Republicans combined to defeat the entire article on Election and Elective Rights.³⁵ But the next day the issues seemed clearer to the delegates and they voted to reconsider the article. Delegate Crowley of Walla Walla, in deference to the group that defeated the entire article, moved to substitute and change the submission date back to 1889 at the same date the constitution would be submitted. His motion was seconded and carried by a voice vote.³⁶ Judge Eldridge made one more attempt to have the question left to the legislature. He proposed that if the people failed to ratify the separate article, the question should be left to the legislature. His amendment failed, forty-three to twenty-eight.³⁷ After this motion by Eldridge, the article, as amended to provide for submitting the suffrage question to the people in 1889, received its final approval by a vote of sixty-seven to five.³⁸

Prohibition was another question that the convention submitted to the people in a separate article. Despite the

35 Tacoma Daily Ledger, August 14, 1889. The vote on this was 32 to 32, but a majority was needed to approve a section.

36 The Minutes, p. 370.

37 Ibid.

38 Ibid., p. 371. Voting against it were Delegates Eldridge, Clothier, Manley, McReavy, and Tibbetts.

numerous petitions submitted by the people and the Washington State Temperance Alliance, and the activity of Reverend R. B. Sutton, the General Agent of the Alliance, the Committee on Schedule, Miscellaneous Subjects and Future Amendments recommended in a majority report that no action be taken by the convention on the question of prohibition. A minority report was also submitted by Delegates Dickey and J. M. Reed recommending that the question be submitted to the people in a separate article. On July 24 the majority report was adopted and the minority report was laid aside.³⁹ Most of the delegates were "unwilling to give consent to a provision in the constitution that they believed would defeat its ratification."⁴⁰

By August 3 the friends of prohibition had been active enough to secure sufficient backing to have the convention reconsider the prohibition question. On that day Delegates Dickey, J. M. Reed, Jamieson, Buchanan, and Comegys submitted a report which again asked for a separate article to be submitted to the people.⁴¹

The Spokane Falls Northwest Tribune, a prohibitionist mouthpiece, had its bit to add concerning this new attempt to

39 Ibid., p. 167.

40 L. J. Knapp, "Origins of the Constitution," Washington Historical Quarterly, Vol. IV, No. 4, pp. 262-263.

41 The Minutes, p. 247.

submit the prohibition question to the people,

The entire liquor element and all the votes they can muster will go against it not as a matter of whether it is right or wrong, but because of their interests. Laws are not made now days with reference to what is right or wrong but according to their popularity. We will not be surprised if licences are granted prize fighters in this territory. 42

Despite the fears of this paper the amendment to submit the question to the people carried by a vote of fifty-one to eleven.⁴³

These separate articles were then referred to the Judiciary Committee which revised and incorporated them into section seventeen of the article on schedule. These separate articles were later voted down by the people. One writer felt that if women's suffrage and prohibition had been constitutionally guaranteed, the constitution itself would not have been ratified.⁴⁴ Others felt that the articles, especially women's suffrage, had not received a fair vote, for the women of the territory had not been able to vote upon them.⁴⁵

The other sections of the Election and Elective Rights Article were readily approved by the convention. The

42 Spokane Falls Northwest Tribune, July 26, 1889.

43 The Minutes, p. 248.

44 L. J. Knapp, "Origins of the Constitution," Washington Historical Quarterly, Vol. IV, 1913.

45 Stella Pearce, "Suffrage in the Pacific Northwest," Washington Historical Quarterly, Vol. IV, p. 117.

Elective Rights Committee and the legislative committee had previously reported their conclusions to the Legislative Apportionment Committee.⁴⁶ This latter committee had then known who was to vote for what offices and could, therefore, report their article to the convention.

Committee Chairman Crowley of Walla Walla had borrowed quite freely from Hill's proposed constitution. Crowley had his committee's report read to the convention on August 9. His report allowed each county to send one member to the lower house of the state legislature and provided that the remaining legislators be elected on a comparative scale based on the number of votes cast at the first state election. A Seattle newspaper said of this proposal,

This plan discriminates in favor of the less populated counties, but the inequalities will disappear in a few years when it is expected that all the counties will be sufficiently well settled to entitle them to representation in accordance with the usual method of apportionment. ⁴⁷

On July 12 the report was read for its second time and after one minor amendment was adopted.⁴⁸ Delegate Dyer moved to suspend the rules and place the article on its final

46 Composed of Delegates Crowley - Chairman, Allen, Dyer, Govey, Hicks, Eschelman, Sohns, West, P. C. Sullivan, Prosser, Hungate, Van Name, Cosgrove and Sturdevant.

47 Seattle Post-Intelligencer, August 12, 1889.

48 The Minutes, p. 347.

passage, and this was done. The article passed by a vote of forty-eight to six.⁴⁹

Delegate Crowley, Chairman of the Legislative Apportionment Committee, was generally congratulated "upon carrying his article through without amendment beyond a small change . . . to which he readily agreed."⁵⁰ Crowley's home town newspaper was not proud of him, however,

Can it be anything but a political scheme when D. J. Crowley, the genial law partner of "Our John" [John Allen who later became a United States Senator] is placed upon the committee on apportionment and representation as chairman? This committee will designate the legislative districts and establish the number of members of both houses. John B. Allen's senatorial expectations seem to meet with the insurance of gratification in the selection of the very man who out of purely intimate business relations might be expected to do all he could in Allen's favor. We do not wish to be understood to mean that our friend Crowley will in any way forget his duty to the people but we must also note that Hiram Allen, brother of the representative, is also on this committee, with T. P. Dyer of Seattle, the right-hand man of Judge Hoyt, who was evidently placed as chairman of the convention to injure his future candidacy for Washingtonian honors.⁵¹

What the paper claimed was partly true, but the small part the legislative apportionment committee had in the affair, and the fact that the newspaper didn't insist on this, tends to place the blame, or credit, elsewhere.

⁴⁹ Ibid.

⁵⁰ Seattle Post-Intelligencer, August 19, 1889.

⁵¹ Walla Walla Weekly Statesman, July 13, 1889.

The Legislative Apportionment Article was not the only article that pertained to the ballot that was readily passed. The article that pertains to future amendments to the constitution was passed with but two minor changes. These minor changes did not change the two methods of amending the constitution that the Future Amendment Committee provided.⁵²

The first method of amending the constitution provided that the legislature, either house, could propose an amendment. ". . . if the same shall be agreed on by two-thirds of the members elected to each of the two houses," the amendment can then be submitted to the people for ratification.⁵³ The electors of the state must then approve it "by a majority of all electors voting at said election."⁵⁴

The second method of amending the constitution provided for the convening of a constitutional convention to "revise or amend this constitution."⁵⁵ This section as well as the former section were readily agreed to by the convention, as they had been in the constitutional convention of 1878 from which they were taken.⁵⁶ Only one vote, that of Delegate

52 Composed of Delegates Sharpstein - Chairman, McElroy, Buchanan, Lillis, J. M. Reed, Comegys, Gray, Dickey, and Jamieson.

53 The Minutes, p. 244.

54 Ibid.

55 Ibid., p. 245.

56 Meany and Condon, Washington's First Constitution, p. 48.

Jones, was cast against the article's passage.⁵⁷

These methods of amending the constitution leave little to be desired. They are effective but could be made more so by several minor changes in their structure. The article would be more efficient if the vote of the legislature required to submit an amendment to the people were changed from "two-thirds" to a simple majority. It would also be more effective if a move to call a constitutional convention required but a majority of those voting on the question instead of a "majority of all the electors voting at said election."⁵⁸

The Constitutional Convention of 1889 made no provisions for initiatives and referendums.⁵⁹ The delegates believed that everything pertaining to the ballot that was necessary had been accomplished. In general none of these provisions are remarkable and all are quite similar to provisions found in other constitutions framed before Washington's.⁶⁰

57 The Minutes, p. 287.

58 Report of the Advisory Constitutional Revision Committee, p. 21.

59 Initiatives and Referendums were provided in 1912 by Constitutional Amendment Number Seven, which is now appended to Article Two, the Legislative Article.

60 Constitution of the State of Washington, published by Earl Coe, Secretary of State, pp. 112 and 119.

CHAPTER V

THE CORPORATION ARTICLE

Prior to and during the time of the convention there was an active growing distrust of corporations, fostered by the Granger movement and the growing labor unions. The labor unions wanted the rights of labor protected from corporational manipulations by a constitutional provision. The Grangers and others wanted the corporations of the state restricted and corporate abuses corrected. But in the constitutional convention all attempts to protect labor rights made by the delegates were labeled "legislative." All attempts to provide for the correction of corporate abuses were termed "demagogic." These two labels were appended indiscriminately to nearly any measure or clause that was disliked by other delegates in the convention or by newspapers and individuals outside the convention.

It was true that the rights of labor and laboring men should have been protected by law, but not necessarily constitutional law. A constitution was supposed to contain only fundamental matters, and the enumeration of each right and the proper working conditions of labor was not fundamental. The delegates to the 1889 constitutional convention realized this.

As an example, Griffitts' proposal to prohibit the employment of children in dangerous occupations was agreed to in principle but was stricken because it was too "legislative."¹

On the other hand, the delegates realized that state legislatures delayed correcting corporate abuses. They realized that only by inserting corrective measures in the constitution could hope of relief of such abuses be obtained.² Most of the attempts to insert such provisions were labeled "demagoguery," with the label of demagogue especially applied to Delegate Kinnear of Seattle who, as chairman of the corporation committee, was mainly responsible for the insertion of all such provisions in the constitution.³ Many of these provisions did not arise in the convention but came from conditions and groups outside.

The Granges were clamoring for restrictions on corporations. They claimed that banking corporations were responsible for the inelastic credit system in the country, they blamed monopolies for the high cost of necessities of

1 The Minutes, p. 354.

2 Quentin S. Smith, An Index of the Journal of the Convention, p. 112.

3 Olympia Washington Standard, July 19, 1889. N. H. Owings in a letter to E. P. Ferry, July 23, 1889, states that Kinnear in the convention was opposed to corporations only to win the vote of the Seattle "rabble" when he ran for Governor "which he was crazy to be." Owings Family Letters, Pacific Northwest Collection, University of Washington.

life, and brokers were accused of reducing farm prices.⁴ The specific target of the Granges, however, was the railroads in the state.⁵

The three railroad corporations attacked by the Granges were the Cascade Railroad Company, the Oregon Railway and Navigation Company, and the Northern Pacific Railroad Company. It was claimed that the Cascade Company charged exorbitant fees for portage around the cascade obstruction to Columbia River traffic. The Oregon Railway and Navigation Company was charged with setting rates completely in discord with just rates.⁶ The Northern Pacific Railroad was criticized for its failure to complete its lines on the land granted by the government. It was charged that this company spent more on keeping competing railroads out of the state than in completing its own road.⁷

There was some truth in these charges and many of the delegates to the convention realized it. [During the first ten days of the convention Delegates Godman, Sharpstein, Griffitts, Dyer, Buchanan and Kinnear presented petition after petition

4 LeRoy Hafen and Carl Rister, Western America, p. 647.

5 Harriet P. Crawford, "Grange Attitudes in Washington, 1889-1890," Pacific Northwest Quarterly, Vol. XXX, No. 3, p. 250, July 1939.

6 Chapter IV above.

7 Crawford, "Grange Attitudes in Washington," Pacific Northwest Quarterly, Vol. XXX, No. 3, pp. 250-254.

all designed to limit corporate power.⁸ It early appeared that the delegates wished to provide corrective measures for corporate abuses. Other factors, though, were also at work. The Puget Sound Weekly Argus, the Tacoma Daily Ledger, and the Olympia Washington Standard editorialized repeatedly on the danger of this attitude. They claimed that the restrictions of corporate activities would drive capital from the state and discourage new capital from entering the state. They thought foreign capital was needed to develop the state's resources.⁹

Gradually the convention's attitude towards limiting corporations began to change.

The feeling towards regulating corporations is changing and from the talks in the lobbies and around the hotels it is evident that while the rights of the people will be strongly protected, nothing that will keep capital out of the state will be enacted.¹⁰

This change in attitude was accomplished partly by the editorializing of the territorial newspapers and partly by the number of lobbyists who came to Olympia.

... it is wonderful how Olympia has developed as a health resort during the past four weeks, attracting

8 The Minutes, pp. 49-50, 59-60, 63-64, 150; the Tacoma Daily Ledger, July 10, 11, 12, 1889; Puget Sound Weekly Argus, July 11, 1889; Washington Standard, July 19, 1889.

9 Puget Sound Weekly Argus, August 1, 1889; Tacoma Daily Ledger, July 27, 1889; Olympia Washington Standard, August 1, 1889.

10 Spokane Falls Northwest Tribune, August 2, 1889.

prominent men from all parts of the territory.¹¹

The lobbyists turned out in force when Kinnear presented his committee's report on July 26. The section was due to come before the convention for discussion on August 2.

Section one of the Corporation Article stated that corporations could be formed under general laws only and were responsible to and could be controlled by the legislature. This was a restatement of the United States Supreme Court's decisions on the so-called "Granger Cases."¹² Section two revoked all corporate charters that had been issued in the territory if actual organization of the corporation had not already taken place. Section three prevented the legislature from extending any existing charters and from remitting any forfeitures. These three sections were approved with neither amendments offered nor debates arising.¹³

The sections that defined the term "corporation" and posted the right of a corporation to sue and be sued, stated

11 Spokane Falls Review, July 23, 1889.

12 The railroad commissions which were established after 1870 restricted railroad activity, "and soon the railroads found themselves subjected to a wide variety of restrictions.... In the Granger cases the validity of these laws was presented to the Supreme Court." The Granger cases, then, "... involved the new and important problem of the power of state legislatures to regulate the rates and services of railroads...." The case of *Munn v. Illinois* (U.S. 113, 24 L. ed. 77) was the first one. Robert E. Cushman, Leading Constitutional Decisions, p. 241.

13 Tacoma Daily Ledger, August 2, 1889.

that foreign and local corporations were to be treated under the same general laws, and it further stated that corporations were subject, as are individuals, to the exercise of the right of eminent domain, were then adopted.¹⁴

One section of the report of the Committee on Corporations read,

No corporation shall engage in any other business than that authorized in its charter. ¹⁵

Delegate Turner moved to strike this section because he thought it was purely legislative and unnecessary, as the courts already confined corporations to their chartered activity. With the vocal aid of Stiles, Godman, Jones, Crowley, and Dunbar, Turner's motion to strike carried.¹⁶

Another section that was stricken because it was "too legislative" was the section forcing corporations to keep copies of their books in the state and open for state inspection at all times.¹⁷ Delegate Reed moved to strike the section and Crowley, Turner, Sharpstein, Hoyt, and Weisenberger seconded the motion. Delegate Kinnear defended the section but to no avail; the move to strike carried.¹⁸ These

¹⁴ Ibid., August 3, 1889.

¹⁵ The Minutes, p. 187.

¹⁶ Seattle Post-Intelligencer, August 3, 1889.

¹⁷ The Minutes, p. 188.

¹⁸ Seattle Post-Intelligencer, August 3, 1889.

same delegates believed it was the right of the courts to decide where a corporation could be sued, and successfully led a vote to strike the sentence,

A corporation or association may be sued in the county where the contract is made or is to be performed. 19

Section four which declared the liability of stockholders, section six which placed limitations on the issuance of stock, and section eleven which declared the liability of stockholders in banking firms came before the committee of the whole.²⁰ Opposition to these measures developed after two Seattle businessmen, Burke and Haller, had telegraphed and written to Kinnear, Sharpstein, Minor, Henry, Tibbetts and Weisenberger in protest to the sections.

Let us not throw obstacles in the way of getting cheap money for the development of the varied resources of this state, let us, rather, encourage the coming in of capital for these purposes. 21

These businessmen felt that such stockholder liabilities and restrictions on corporate activity would discourage investments in the state. Sections four and six were adopted by the

19 The Minutes, p. 188.

20 Ibid., p. 187-188.

21 Burke and Haller to Sharpstein, Weisenberger and Kinnear, August 1, 1889, "Letterbook 27," p. 411, Burke Bequest, Pacific Northwest Collection, University of Washington.

convention despite the efforts of the friends of Burke and Haller.

Because of this adoption the constitution now holds a stockholder "liable for the debts of the corporation to the amount of his unpaid stock." It also prevents corporations from issuing "watered stock," or any stock without the approval of the largest stockholder. It declares that "all fictitious increases of stock or indebtedness shall be void." The delegates' suspicion of the railroads prompted this last section. They believed that goods and service rates varied directly with the amount of corporate stock, and hence any watering of the stock or issuance of stock dividends would serve as basis for increasing the rates.

Burke and Haller were successful, however, in getting section eleven changed. In a letter to Delegate Kinnear they urged that Weisenberger be told of the inadequacy of the section in its definition of the liability of stockholders of banking firms,

Each stockholder ... shall be ... liable for such proportion of all its debts and liabilities ... as the amount of stock or shares owned by him to the whole of the subscribed capital stock. 22

Burke and Haller urged,

... that this section be amended so that the additional liability be made fixed and certain. 23

Delegate Weisenberger proposed a substitute for section eleven that answered the request of Burke and Haller and stilled the delegates' fears that the section would tend to keep capital out of the state.²⁴ This amended section closely resembled the Congressional Act of 1874 which had governed corporate and banking activity in the territory. Both the amended section and the Congressional law fixed liability of stockholders in banking firms at double the amount of stock owned.²⁵ This was a provision to protect depositors from bank closures and insolvency.²⁶ In this form section eleven was adopted by the convention.

Section nineteen of the Corporation Committee's Report established the rights of telegraph and telephone companies to operate in the state. It was approved by the committee of the whole and the convention itself. Then Delegate T. T. Minor of Seattle called attention to the fact that the section contained the right of telephone and telegraph companies to operate along railroad lines and said,

23 Burke and Haller to John Kinnear, July 29, 1889, "Letterbook 27," p. 408, Burke Bequest.

24 The Minutes, p. 267.

25 Neil Roy Knight, "History of Banking in Washington," (Thesis, University of Washington, 1935), p. 51.

26 Ibid.

The right of eminent domain is hereby extended to all telegraph and telephone companies. 27

But the proviso which prohibited the exercise of this right by these companies without just compensation had been omitted by the printer.²⁸ A vote was taken to suspend the rules and put this proviso back into the section, but the necessary two-thirds vote was not secured and the proviso was omitted. Delegates Turner, Govey, Hoyt and others immediately filed a protest to this procedure, but no action was taken on it.²⁹

Constitutional restrictions on railroads occupied the delegates' time after the foregoing had been adopted. The convention adopted the sections that declared common carriers to be subject to legislative control, that forbade combination by carriers to control rates, that prohibited discrimination between places or persons in regard to transportation rates, and that prohibited the consolidation of competing lines. Monopolies and trusts were denied entrance into the state. Express companies were allowed to operate within the state without railroad discrimination.

These provisions were not well received by all the people in the state. Objecting to the sections were Burke, Haller and others of Seattle who had organized a corporation

27 The Minutes, p. 190.

28 Ibid., pp. 401-402.

29 Tacoma Daily Ledger, August 20, 1889.

to build a railroad in Seattle. One of the incorporators was in New York trying to raise money for the enterprise, while the rest of the money was to be subscribed through the sale of stock in Washington. When the corporation article was reported, Burke, Haller and friends saw in its clauses provisions that would tend to dissuade local investors from buying corporate stock, not only the stock of their corporation but stock of all local corporations. Consequently, they wrote to Delegate T. T. Minor, saying,

The whole report is bad as being legislation, and not fit to be engrafted as fundamental law. It is a literal copy of the infamous Dennis Kearney - Sand-lot constitution of California which drove a hundred million dollars from the state and turned it over bodily to the tender mercies of Central Pacific Railroad.... Why should we repeat this folly and give more than the same fatal sway to Northern Pacific and O.R.&N. in this state. 30

The Northern Pacific and the Oregon Railroad and Navigation Companies were two large corporations already organized and operating in the state. They had the necessary funds and the extrastate charter that could make litigation against the company too expensive for all but the state itself. These two companies were protected in their stockholder's liabilities and in their charters. Consequently, they did not especially fear any constitutional clause that might be enacted, their

30 Thomas Burke to Delegate T. T. Minor, August 1, 1889, "Letterbook 27," p. 446-447, Burke Bequest.

advantages protected them from the constitution's limitations on corporations.

Of all the clauses in the corporation article as reported, they stood to lose less than any other corporation if the clause establishing a railroad commission was adopted. Their wealth and their position seemed to assure them that any railroad commission established would fall into their influence. The two corporations were in a good position to influence such a commission. But even they did not want such a commission established, for it would entail spending energy and time to work through and with it.

The railroad commission section was based on the California Constitutional section of the same intent.³¹ This section was called "radical" by many authorities of the day, partly stemming from the fact that Dennis Kearny who was called a "radical" was influential in its framing.³² The Corporation Committee had taken the section as a model and, like the original, provided for a railroad commission of three members elected by the people for six-year terms.³³

31 Seattle Post-Intelligencer, July 13, 1889; Tacoma Daily Ledger, July 17, 1889.

32 "Largely through [Kearney's] influence, however ... certain measures of a social and economic nature were embodied in the state constitution and labor came to play a more important part in California politics. Incidentally the expressions 'Sand-lot Politics' and 'Kearneyism' were added to the state's political vocabulary." Robert Glass Cleland, A History of California, The American Period, p. 422.

33 The Minutes, pp. 189-190.

It shall be the duty of such commissioners to exercise a supervisory control over all railroads, canals, and other transportation companies, associations, and corporations and over all common carriers, and in the absence of legislation upon the subject to regulate fares and freights and prescribe and limit the charges therefor, to prevent abuses, discrimination, and extortion by such companies, associations, or corporations and to perform such other duties as may be prescribed by law. The legislature shall enact all laws necessary to carry the foregoing provisions into effect and shall more fully define the qualifications, powers, duties, responsibilities, and fix the compensation of railroad commissioners. 34

Accompanying this report was a minority report submitted by P. C. Sullivan who was on the Corporation Committee. This minority report gave the legislature power to establish a railroad commission if that body felt such a commission was necessary. The minority report also gave the legislature power to fix rates and prevent discrimination and extortion in rates charged for hauling materials for other railroads.³⁵

Reaction to the proposed section varied in the territory. The Olympia newspapers, the Washington Standard and the Evening Olympian stated that a board of railroad commissioners was not necessary and would delay railroad development in the state.³⁶ The Tacoma Daily Ledger and the Walla Walla Statesman believed that the proposal for a railroad commission arose from

34 Ibid.

35 Ibid., p. 191.

36 Olympia Washington Standard and Evening Olympian, August 1 and 2, 1889.

pure demagogism.³⁷ The Puget Sound Weekly Argus of Port Townsend and the Spokane Falls Review thought the control of the railroads should be left to the courts.³⁸ The Walla Walla Weekly Union and the Seattle Post-Intelligencer, to the contrary, were the strongest advocates of establishing such a commission, among all the newspapers of the territory.³⁹

The cities of the territory feared that railroad construction now in process would be halted if the proposal was adopted. Many, Ellensburg, Spokane, Elma, Aberdeen and others, telegraphed their objections to the delegates.⁴⁰

At break of day telegraphic protests against the adoption of the report of the Committee on Corporations ... began to take their way into Olympia. Some few of these ... were made public, but many more lie buried in the pockets of the delegates, silently but powerfully influencing their actions....⁴¹

The telegrams from Burke and Haller to Delegates Minor and Kinnear exaggerated but otherwise represented the feelings of

37 Tacoma Daily Ledger and Walla Walla Statesman, July 27, 1889.

38 Puget Sound Weekly Argus and Spokane Falls Review, August 1 and 2, 1889.

39 Walla Walla Weekly Union and Seattle Post-Intelligencer, August 1 and 3, 1889. All the newspapers mentioned the subject repeatedly, but I have limited my references to show only what was said as the issue was debated in the convention.

40 Tacoma Daily Ledger, August 3, 1889.

41 Ibid.

the small local railroad companies to the corporation article, especially to the railroad commission section,

While honestly intending no doubt to check monopoly, the Convention would be conferring upon N.P. and the O.R.&N. the most complete and monstrous monopoly ever saddled upon a free state. It would be disastrous to nearly every town in the State. Protect States from such a calamity. 42

Prior to these telegrams, Burke had sent a letter to Delegate Francis Henry, and Henry immediately filed a protest to the section establishing a railroad commission.⁴³ Delegate Henry based his protest on three principles:

First: I believe that the creation of the commission ... to supervise ... the affairs of ... an association in certain specified lines of lawful business to the exclusion of others is discriminating....

Second: That the powers conferred upon said commission ... is a delegation to one and the same person of all the powers which the people ... have jealously separated into three independent departments....

Third: The effect of the [Railroad Commission] ... will be to prevent the investment of capital in the development of the resources of the state.... 44

The strongest foe of the measure, however, were the railroads which had moved a strong lobby into Olympia. W. P. Keady and J. B. Mountgomery of the Oregon Railroad and Navigation Company were there.⁴⁵ F. L. Muker of the Atchison,

42 Identical telegrams from Burke and Haller to Minor and Kinnear, August 1, 1889, "Letterbook 27," p. 463, Burke Bequest.

43 Ibid., p. 417; The Minutes, pp. 206-207.

44 The Minutes, pp. 206-207.

45 Walla Walla Weekly Union, August 24, 1889.

Topeka and Santa Fe Railroad Company arrived in Olympia on July 13, 1889.⁴⁶ General Manager Holcomb of the Union Pacific Railroad Company came to Olympia on July 15, 1889, in his special coach, number 999.⁴⁷ Nicholas Owings and John I. Booge lobbied for the Northern Pacific Railroad Company from the day the convention opened.⁴⁸

Late in the afternoon of August 2 the railroad commission section came before the committee of the whole which discussed its provisions that afternoon and most of the next day. P. C. Sullivan urged the adoption of the minority report which he had framed. He claimed that a railroad commission would not induce railroad construction in the state as railroads would not like being dominated by a state commission. Delegate Sharpstein said that the railroad lobbyists agreed that railroad activity in the state was such as to warrant the establishment of a corrective board, but these lobbyists claimed that the railroads would leave the state if one was established.⁴⁹ E. H. Sullivan and Henry concurring advanced the claim that a commission would drive the railroads from the state. Further, they added, it was the duty of the legislature,

46 Tacoma Daily Ledger, July 14, 1889.

47 Ibid., July 16, 1889.

48 Thomas Cavanaugh to E. P. Ferry, July 7, 1889, Ferry Documents.

49 Tacoma Daily Ledger, August 3, 1889.

not the convention, to provide for such a commission.⁵⁰

The most vociferous backers of the commission clause, Kinnear, Griffitts, Weisenberger, Warner, J. M. Reed, Eschelman, Buchanan, Power and Turner, claimed that twenty-one states had such commissions and were proud of their accomplishments. They stated that a railroad commission was an inexpensive method of settling complaints without recourse to expensive court litigation. It would, they claimed, protect the people from exorbitant rates, prevent railroad lobbies from influencing future legislatures, would advance the interests of the farmers, provide reduced rates, and, by making the railroads more honest, would increase the people's respect for the railroads and induce them to ship more freight by rail.

These latter arguments were strong enough to obtain the approval of the majority report which established a railroad commission. Thirty-nine votes were cast in its favor.⁵¹

The next Monday, August 5, the section came before the committee of the whole for its second reading.

After a multitude of proposed amendments and considerable discussion the section was finally rejected

50 Ibid.

51 Tacoma Daily Ledger, August 4, 1889. None of the newspapers give the tabulation of this vote. Who and how many voted against it can only be estimated. At that time there were five absent delegates, Allen, Browne, Dallam, Hicks, and Jeffs. If everyone present voted, the section passed by a margin of eight votes, thirty-nine to thirty-one.

altogether by a vote of 36 to 22. The railroad commission was provided for in an amendment to Section 22 which states that a railroad commission may be established and its powers defined by the legislature. 52

Thus, the establishment of a railroad commission was left to the discretion of the legislature.

On August 6 the section which was amended so as to leave the establishment of a railroad commission to the legislature came before the convention which had met to give it its final approval. The debates of this day were significant chiefly because they show the activities of the railroad lobby and aid in deciding who voted for the railroad commission originally and against it later.

Delegate Turner excited strong debate when he said,

Thirty-nine delegates voted for the section on Saturday, and since then a railroad lobby has surrounded the capital and changed the vote. 53

Warner, Sturdevant, Power, Blalock, and Govey all supported Turner in his claim that a railroad lobby was active in the convention. Delegate Power of LaConner substantiated this assertion by saying that he could no longer support the section providing a railroad commission, although he had strongly supported it previously, because he had been informed that the

52 Ibid., August 7, 1889. Italics mine.

53 Tacoma Daily Ledger, August 7, 1889.

railroad construction in his own county would be stopped if a railroad commission was established by the convention.⁵⁴

Delegate Govey also reported that he could no longer support the measure because his county would not get needed railroads if it was adopted.⁵⁵

Delegates Godman, Cosgrove, Weir, Glascock, and Comegys claimed that they had neither seen nor heard of a railroad lobby in Olympia. Godman, Stiles, Cosgrove, and Weir claimed, rationalizing their action, that they originally voted for the section "to give its framers a chance to perfect it, but since it had not been perfected, they had changed their ballot and voted against it."⁵⁶

Delegate Turner then suggested a substitute that made it mandatory for the legislature to establish a railroad commission but under its own terms. His motion lost by a vote of forty-two to twenty-eight.⁵⁷ The railroad commission section was then voted on for the third and last time and the move to strike it carried by a vote of forty-three to twenty-seven.⁵⁸ Then the section allowing the legislature to establish the

54 Walla Walla Statesman, August 8, 1889.

55 Ibid. Govey was from Olympia.

56 Seattle Post-Intelligencer, August 7, 1889.

57 The Minutes, pp. 267-268. There was no political party or sectional significance shown in the voting on this article.

58 Ibid.

commission was adopted.

As thirty-nine delegates voted for establishing the commission and as at least five delegates were absent, the commission's original opposition was composed of thirty-one votes at the most. The last vote taken on the measure saw five delegates absent, twenty-three in favor, and forty-seven against.⁵⁹ In short, about sixteen delegates changed their vote.⁶⁰

That a railroad lobby was active in the convention can be proved by the remarks of the delegates themselves. That the lobby's tactics were blatant can be seen in the way it secured the votes of Delegates Govey and Power.

Records will never show how many votes were changed because of the lobby's influence. There always was, and it must be remembered, a strong opposition to the railroad commission centering around Delegates Henry and P. C. Sullivan. Many people did not like the scope of powers placed in the hands of three men.⁶¹ Some feared lest the commission fall

59 Ibid., p. 269.

60 Delegates Godman, Cosgrove, Stiles, and Weir admitted changing their vote and gave their weak excuse for so doing. (See preceding page.) Delegates Govey and Power, who had voted for it originally, withdrew their support to prevent a stoppage of needed railroad construction in their counties. (Tacoma Daily Ledger, August 7, and Walla Walla Statesman, August 8, 1889.) Delegates Warner, J. M. Reed, and Eschelmann who had originally given strong vocal support to the measure, and, because of this could be assumed to have originally voted for it, later voted against it. (Seattle Post-Intelligencer, August 7, 1889.)

61 As seen in Henry's protest. (The Minutes, p. 206.)

into the control of the Northern Pacific Railroad.⁶² Others feared that such a commission would drive the railroads out of the state.⁶³ These three fears seemed to possess the delegates also.

After the convention adjourned the Seattle Post-Intelligencer and the Vancouver Independent called the convention's failure to establish a railroad commission a bountiful source of later political corruption.⁶⁴ Supreme Court Justice Stiles, who as a delegate had originally voted for the commission but then changed his vote, later lamented the absence of such a commission.⁶⁵

After statehood was attained, succeeding governors asked the state legislatures to establish a railroad commission. It was not until 1905 that one was established.⁶⁶ The Granges were adamant in their insistence that such a commission be established, however, even when the Granger-Democratic Fusion Power became the strongest political party in the state,

62 Burke and Haller to Minor and Kinnear, August 1, 1889, "Letterbook 27," p. 463, Burke Bequest.

63 Delegate Henry on convention floor. (Tacoma Daily Ledger, August 4, 1889.)

64 Vancouver Independent, August 28, 1889; Seattle Post-Intelligencer, August 26, 1889.

65 Theodore Stiles, "The Constitution of the State," Washington Historical Quarterly, Vol. IV, p. 286.

66 Messages of the Governors to the State Legislatures, 1889, 1891, 1893. Olympia, Public Printer, 1889, 1891, 1893.

no railroad commission was instituted.

The fear that the Corporation Article would keep capital out of the state has proved to be unfounded. The numerous railroads in the state testify to the leniency of the railroad restrictions in the article. It would seem that the article was not as hostile to corporations as it was first claimed to be.⁶⁷

⁶⁷ L. J. Knapp, "Origins of the Constitution," Washington Historical Quarterly, Vol. IV, p. 273.

CHAPTER VI

A BUSY WEEK

In the week between August 7 and August 12, more articles were disposed of in the convention than in any other similar period of time. Three factors were responsible for this expediting of business. The first factor was that most of the committee members were presenting their respective committee reports during this week, thus turning their attention from their committees to the convention. The second factor was the delegates' realization and the newspapers' insistence that too much time was being wasted and that if a constitution was to be presented to the people in the fall, the convention must hasten its activity.¹ Accompanying this factor was the tendency to postpone all debatable articles and treat only the noncontroversial ones.²

The third factor was the delegates' increased ability to differentiate between legislative and fundamental matters - what should be in the constitution and what should be left to the legislature. In the same way that the debates on the

1 Tacoma Daily Ledger, August 6, 1889.

2 The debatable tide land article was thus postponed a week to allow treatment of other less controversial articles.

Corporation Article showed that the convention's hostility to corporations was decreasing, the Militia Article showed that the delegates were changing from attempting to legislate to acting only on fundamental or constitutional insertable matters. After the Militia Article was passed, the trend towards putting legislative measures in the constitution stopped, thus expediting the passage of articles considerably.

Washington Territory's militia had proved itself on various occasions. A Territorial legislative enactment of 1888 which reorganized the militia provided for its operation down to the smallest detail.³ Consequently the Adjutant General was able to applaud its activities in his report to the Territorial Legislature.

The inestimable services rendered by the National Guard during the labor riots of 1886 at Seattle, the later difficulties at New Castle in 1889; and the still later service at the great fires at Seattle and Spokane Falls, has proved to the most ardent opponent of the militia that the small cost of maintaining the force is returned a hundred fold in the value of life and property saved through its intervention.⁴

Many of the delegates agreed with the Adjutant General in his statements that the militia was well organized. Consequently

3 Laws of Washington Territory, Eleventh Biennial Session 1887-8, Chapter LXXXIII, pp. 147-157. The act entitled "An Act for the More Efficient Organization and Discipline of the Militia of the Territory of Washington," was approved January 28, 1888.

4 Report of the Adjutant General of Washington Territory to the Legislative Assembly, 1888-1889, p. 4.

when the Militia Article was presented to the convention, the delegates objected to the reorganization of the militia which had already been reorganized by the legislature.⁵ They referred to the entire article as the "supreme bit of legislation" presented to the convention by a committee.⁶

The Military Affairs Committee which presented this "supreme bit of legislation," was headed by Delegate W. F. Prosser, a Republican delegate from North Yakima.⁷ Though only fifty years of age, this former Pennsylvanian had served, before coming to Washington, as a teacher, surveyor, miner, and finally as a Colonel with the Union Army in the Civil War. As a citizen of the Territory of Washington he had been auditor of Yakima County and special land agent for the general land office of Washington and Oregon, and then delegate to the convention.⁸ His military bearing as much as his former commission with the Union Army won for him the nickname, Colonel.⁹

Delegate Prosser asked the aid of Colonel John C. Haines of the Territorial Militia in framing the Militia

5 Tacoma Daily Ledger, July 30, 1889.

6 Ibid.

7 The committee was composed of Delegates Prosser, Tibbetts, Cosgrove, Berry and Glascock.

8 Quentin S. Smith, An Index to the Minutes of the Convention, p. 210.

9 Olympia Washington Standard, July 19, 1889.

Article.¹⁰ The article the two men presented was complete to the extent of giving the number of men in a company. To the like-minded delegates, Minor, Kinnear, Buchanan, P. C. Sullivan, and others the article was fundamental and belonged in the constitution, but to the majority of the delegates the article was legislative and a step towards military despotism. On July 29 the article came before the convention where delegate Turner called it ". . . an act of legislation, pure and simple," and referred it back to its committee.¹¹

The next day the article was reported back but unchanged in content. Section one of the report which states that "all able-bodied male citizens" in the state were liable for military service was readily adopted by the convention. However, on section two which relates how the militia is to be operated, the convention balked. The delegates could see that because there was no mention of the legislature in the section, the militia would be outside the legislature's control. Delegates Turner, Griffitts, J. Z. Moore, and Comegys declared that the section was not only legislative but would free the militia from legislative control; furthermore, it would force upon the people an active militia whether they

10 John C. Haines was a Republican lawyer from Seattle, not a delegate, who aspired to the U.S. Senate, the position Delegate Turner wanted.

11 Seattle Post-Intelligencer, July 30, 1889; Tacoma Daily Ledger, July 30, 1889.

wanted one or not.¹² A move to strike the section by Griffiths was carried. J. J. Browne's substitute which firmly placed the militia under the supervision of the legislature was then adopted.¹³

Section three of the militia article provided for the establishment of a soldier's home. Delegates Cosgrove, Dunbar, Durie, Gowey, Kinnear, and Dyer, proclaiming their gratitude to the Union soldiers, moved to adopt the section. Delegate Buchanan thought this section was pure legislation because the "old soldiers" would soon fade away thus making the need for the home transitory, while the constitution would be permanent. He accused the delegates of using the soldier's home for selfish political ends and stormed from the hall.¹⁴ However, the section was approved.

Sections four, five, and six were adopted with neither debate nor amendment. These sections state that "the Legislature shall provide by law for the safekeeping of the public arms," that the militia shall be "privileged from arrest," while attending militia functions, and that conscientious objectors cannot be compelled to serve in peace times, provided that they pay for such exemptions.¹⁵

12 Tacoma Daily Ledger, July 31, 1889.

13 Ibid., Article X, Section 2, Washington State Constitution.

14 Ibid.

15 The Minutes, pp. 193-194.

The remaining six sections were bitterly attacked for being legislative, and all were stricken from the article. These sections stated the number of companies of which the militia would consist, that the militia would be called "The Militia of the State of Washington," and that the legislature would make appropriations for the militia. The last three sections on the militia itself provided for the election of militia officers, the division of the militia into "divisions, brigades, battalions and companies," and the last section named what occasions warranted the summoning of the militia.¹⁶

Delegate Turner led the opposition to these sections. He pointed out that if these sections were adopted, they would place the militia in a position above the legislature which could not control it because the militia would be constitutionally guaranteed. He also claimed that it was the legislature's duty, not the convention's, to organize the militia, and the organization had already been established. In leading the opposition to this article Delegate Turner had a chance to chide a rival aspirant to the U.S. Senate, John C. Haines. One observer described the debate on the militia article as a contest between Haines and Turner.

Turner downed Haines here yesterday - in a most humiliating manner on the Military Bill. It cut Haines all up. It was a most humiliating defeat. Turner put his

¹⁶ Ibid.

knife in and then turned it around in fine shape.¹⁷

So successfully did Turner emasculate the article that on its final vote Colonel Prosser, its strongest backer, voted against it.¹⁸

The arguments leveled against the militia article - the constant insistence that the constitution contain only fundamental, not legislative matters - clarified the convention's idea of what was fundamental and what was legislative. The delegates maintained this distinction in their treatment of other articles. But one delegate said, "If you want it its fundamental, but if you don't want it its legislative."¹⁹ Regardless of whether the delegates began to agree on what they wanted or if they agreed on what was legislative, they began to expedite the passage of articles which began to contain less and less "legislation." In one week fourteen articles were adopted, half the total number of articles treated by the convention.²⁰

One article that was treated that week was the Jurisdiction Article presented by the Committee for Federal

17 N. H. Owings to E. P. Ferry, July 31, 1889, Owings Family Letters.

18 The Minutes, p. 214.

19 Seattle Post-Intelligencer, August 12, 1889.

20 Five of these articles, Legislature, Impeachment, Election Rights, Legislative Apportionment, and Future Amendments are treated above in Chapters II and IV.

Relations, Boundaries, and Immigration.²¹ The primary purpose of this article was to allow the federal government to establish areas of defense in the state. The article had been presented on August 3, but on that date the convention, thinking it too legislative, referred it back to the committee by not giving it the necessary two-thirds vote that was needed for its adoption.²² Legislative or not, the government was anxious to build fortifications on Puget Sound in case Canada, especially British Columbia, became belligerent in its attitude toward the United States.

Relations with Canada were not overly friendly at this time. Canadians were aggravated at the seizure by Americans of their sealing ships and by the ban against hunting seals that the United States was enforcing regardless of its lack of right to do so.²³ Ownership of several railroads in British Columbia fell into American hands, and American capital was behind the building of other Canadian railroads. This condition was not at all liked in British Columbia, and the people constantly referred to the "American railroad monopoly."²⁴ The Alaska boundary dispute was also causing ill feeling

21 Composed of Delegates Comegys - Chairman, Buchanan, McElroy, West, and McReavy.

22 The Minutes, p. 236.

23 F. W. Howay, W. N. Sage, and M. F. Angus, British Columbia and the United States, p. 324.

24 Ibid., p. 251.

between Canada and the United States.²⁵

Lieutenant Runcey of the United States Army told Delegate Comegys that the Federal Government was serious about fortifying the Sound and could not wait for a legislature to be elected, convened, and induced to enact a law giving the government permission to proceed. Comegys told the convention of the government's desire when he reintroduced the article on Jurisdiction two days later. He made mention of the "British lion moving down the Sound" and the article was adopted.²⁶

The controversial article on Revenue and Taxation was the next article to come before the convention during its "busy week." It was debated, amended and adopted in one day.²⁷ After making several amendments to clarify the meaning, the delegates adopted the first two sections.²⁸ To section three which provides for taxing corporate property, there was attached a minority report which provided for an equal tax on cultivated and uncultivated lands of the same

25 Ibid., p. 368.

26 Tacoma Daily Ledger, August 6, 1889.

27 It was presented by the Taxation Committee composed of Govey - Chairman, Dyer, Fairweather, Berry, Browne, Suksdorf, Godman, Sohns, and Bowen.

28 These sections provided that all property in the state should be taxed and that the legislature should provide uniform and equal rates of taxation on all property "according to its value in money." This latter clause would seem to devalue the Supreme Court's claim that income is property. Incomes were never mentioned in the convention's debates on these sections.

type and class. R. S. Moore expressed his belief that this minority report would aid land speculators and the rich, as they could then clear and improve land without incurring increased taxation. He moved to adopt the majority report instead, and his motion carried.²⁹

Of special notice was section four of the article on Revenue and Taxation which contained a clause that exempted church property from taxation. Several petitions asking for this provision were received by the convention.³⁰ Delegates Govey, Cosgrove, and Griffiths agreed with these petitions and stated that to tax church property was like "taxing people's generosity."³¹ Crowley, however, claimed that to exempt church property from taxation was the first step towards a union of church and state. Godman was against giving the churches, which were "continually trying to regulate everything," any more power or money to do so.³² Griffiths ended the argument by proposing to leave the question to the legislature, and his proposal was adopted.³³

29 Seattle Post-Intelligencer, August 8, 1889.

30 The Minutes, pp. 137, 147, 178.

31 Tacoma Daily Ledger, August 8, 1889.

32 Ibid.

33 Ibid. This section was then incorporated into section two. The first four sections were later stricken and amended by the third, fourteenth, and nineteenth amendments to the constitution.

Four sections of the Revenue and Taxation Report which voided all exemptions not expressed in the constitution, declared the state must relate the reason for which it might desire to borrow money, stated the manner in which debts were to be treated in regard to taxation, and forbade state officers from supplying stationery to the state were termed legislative and stricken from the article.³⁴ Then the amended article was adopted.³⁵

On August 8, the next day, the convention heard and adopted without debate the article presented by the Committee for State Institutions and Public Buildings.³⁶ The report established educational, reformatory and penal institutions. Only one vote was cast against it.³⁷

The same committee prepared the article regarding the seat of government for the state which the convention adopted on the same day it adopted the Article on Public Institutions. The question of which city should be the capital city had been a hotly contested question even before the convention met. To gain the capital the cities of Olympia, North Yakima, and

34 The Minutes, pp. 250-251.

35 Ibid., p. 295.

36 Composed of Delegates T. M. Reed - Chairman, Lindsley, Winsor, Hayton, McCroskey, Travis, and McElroy.

37 That of J. Z. Moore. The Minutes, p. 299.

Ellensburg lobbied diligently in the convention.³⁸ The Committee for State Institutions schemed to have the capital in Olympia, but the Tacoma Daily Ledger exposed its plans which necessitated leaving the question to the people to decide. Consequently, section one of the committee report proposed the form of balloting that was to be followed in choosing the capital city.

Delegate Prosser moved to place the voting day in November of 1890. Delegates Turner, Cosgrove, Stiles, Dunbar, McElroy, T. M. Reed and Lillis seconded the motion.³⁹ Delegate Power suggested delaying the balloting in 1895 to allow the cities that were destroyed by fire - Seattle, Spokane Falls, and Ellensburg - to rebuild and bid for the capital. Delegate Griffitts moved to submit the question to the people when the constitution was submitted, and his move carried.⁴⁰

Section two of the article stating how the capital could be changed from one city to another was adopted next. The delegates made certain that too much money would not be spent on the capital buildings in Olympia until after a permanent capital city had been chosen by the people. They stated in the constitution that the legislature could not

38 Arthur S. Beardsley, "Later Attempts to Relocate the Capital of Washington," Pacific Northwest Quarterly, Vol. XXXII, No. 4, p. 409.

39 Tacoma Daily Ledger, August 9, 1889.

40 Ibid.

appropriate money for capital buildings except for necessary repairs. This assurance was embodied in section three which was then adopted.⁴¹

Section four of the Enabling Act stated that the convention had to provide for perfect religious toleration, disclaim any intention on the part of the state to claim federal lands, provide for the transference of territorial debts to the state, and provide for a system of public schools. The Committee on Federal Relations copied the first two provisions almost verbatim into their report which was really a compact with the United States Government and submitted it to the convention. On August 10 the delegates added the other two sections of the Enabling Act to the article and adopted it without a dissenting vote.⁴²

The same day the Compact Article was passed, the Water and Water Rights Committee report came before the convention.⁴³ This report was significant because water rights had been more than an academic question in the irrigated regions of Eastern Washington. The early Washington irrigators used stream waters according to the rights of appropriation established by the miners of the western states. Appropriation rights were

⁴¹ Ibid.

⁴² The Minutes, pp. 340-341.

⁴³ The Committee was composed of Delegates Mires - Chairman, Manley, R. S. Moore, McCroskey, and E. H. Sullivan.

quite suitable to irrigation as well as mining for an irrigator could appropriate water for irrigation purposes although he did not own land adjacent to the water and although others might make subsequent appropriations upstream. Once an appropriation of water was claimed, all later appropriations had to honor the earlier claim even though they might be for land nearer the water or for land farther upstream. The courts, however, tended to follow the English common law of riparian rights which holds that only the public or those owning land adjacent to a stream could appropriate its waters.⁴⁴

The Washington Territorial Legislature enacted a measure which stated that water could be appropriated for beneficial purposes, thus Washington followed the appropriation system rather than the riparian system.⁴⁵ When the convention met, a more durable legal ground for appropriating water was needed and to supply it the Water Rights Committee copied from the constitutions of two states already noted for their irrigation activities, Colorado and California.⁴⁶ The report they submitted sanctioned the right of appropriating water for public use, gave right of way, upon just compensation, to persons using or needing water, and established a

44 Emmet K. Vandevere, "History of Irrigation in Washington" (Thesis, University of Washington, 1948), pp. 91-93.

45 Laws of Washington Territory, 1873, pp. 520-522.

46 Emmet K. Vandevere, "History of Irrigation in Washington" (Thesis, University of Washington, 1948), p. 95.

detailed system of priorities which gave domestic use priority over agricultural and manufacturing use.⁴⁷

The convention thought this section was too legislative and referred it back to the committee. The committee members realized that it was the duty of the legislature, not theirs, to establish water priorities. Their duty was to frame a provision that would allow the use and appropriation of water under the provisions established by the commonly accepted riparian rights system. They did this by calling the use of waters for irrigation "a public use" and thereby appropriable.

The report the committee presented also called the use of waters for manufacturing "a public use." Delegates Griffiths, Godman, Cosgrove, Travis, Buchanan, Tibbetts and Neace all filed protests against the inclusion of such a declaration in the adopted article.⁴⁸ They did not think the use of water by manufacturers was a public use. However, the article was adopted.⁴⁹

47 The Minutes, p. 219.

48 Ibid., p. 336.

49 The declaration that the use of waters for manufacturing purposes was a public use allowed private manufacturers to condemn private land to obtain water. The Washington State Supreme Court later determined that "Constitutional Article 21, declaring the use of waters for manufacturing purposes a public use, is in conflict with the due process clause of the Federal Constitution in so far as it may be construed to extend the right of eminent domain to take private property for uses essentially private." Washington Reports, "Cases Determined in the Supreme Court of Washington," 1905, Vol. XXXIX, pp. 649-650.

The third article that was passed on August 10 was the Exemption Article, a routine statement to protect owners who had been granted land previous to the time of statehood. The article the committee framed left any such legal protection to the discretion of the legislature. It was adopted without a single opposing vote.⁵⁰

The fourth article to be adopted by the convention on August 10 was the Education Article.⁵¹ Section one stated that public schools should be established for all children in the state, "without distinction or preference on account of race, color, caste, or sex." This section was approved. The next adopted section directed the legislature to provide for a uniform system of public schools. The third section which had been taken from the Proposed Constitution of 1878, the Oregon Constitution, and the proposed constitution compiled by Mr. Hill provided for a permanent school fund and told where the money for the fund was to be raised. The delegates changed the section's wording, clarified its meaning and adopted it.

There was a minor debate over the fourth section which prohibits sectarian control of public schools. Many of the delegates did not think it was worded with sufficient strength

50 The Minutes, p. 335.

51 Prepared by the Committee on Education and Educational Institutions which was composed of Blalock - Chairman, Lindsley, Lillis, Eschelman, Dunbar, and Allen.

to accomplish its purpose.⁵² The majority of the delegates believed it was well worded and the convention adopted it. Section five which tells how the state is to repay any loss of the permanent school fund that might occur was immediately adopted. The final vote on the education article saw only two delegates vote against it.⁵³

On August 12 a report was presented that contained two sections. One provided for the establishment of a state board of health and a bureau of vital statistics, while the other gave the legislature power to regulate the practice of medicine and surgery and the sale of drugs and medicines. No time was lost in adopting this article presented by the Public Health Committee.⁵⁴ The delegates were eager to discuss the Mines and Mining Article so gave their approval to the article immediately upon its presentation.⁵⁵

A complicated system of mining regulations was proposed in the Committee for Mines and Mining report.⁵⁶ One section

52 Tacoma Daily Ledger, August 11, 1889.

53 The Minutes, p. 339.

54 Composed of Delegates Willison - Chairman, Manley, Blalock, Minor, and Turner. All but Turner were physicians.

55 Not a vote was cast against the article. (The Minutes, p. 350.)

56 Composed of Delegates Manley - Chairman, Morgans, Jamieson, Newton, McDonald, Gray and Weisenberger. Newton and McDonald were miners and Jamieson was a mining engineer.

prohibited the employment of children in mines, another made provisions for the safety of the miners, a third allowed the legislature to regulate all mining in the state, the fourth provided for a school of mines in one of the state's educational institutions, and the last limited the working day in a mine to eight hours.⁵⁷

Judge Turner moved to strike sections three and four because they were "too legislative" in character; the convention agreed.⁵⁸ These two sections considered mining in general, while the others were designed to protect the rights of the miners as well as the miners themselves. The next day the remaining sections failed to receive the necessary two-thirds vote needed for adoption. Delegate Manley, Chairman of the Mining Committee that presented the article, said he would make no further effort on behalf of the article's adoption because he could see that it was legislative and did not belong in the constitution.⁵⁹ In this manner the article on mines and mining became the only article that failed of adoption by the convention.

Between the days of August 5 and August 12 fifteen articles were either adopted or rejected.⁶⁰ It was by far the

57 The Minutes, p. 309. The last section was introduced by Delegate Dyer. (The Minutes, p. 352.)

58 Ibid., p. 350.

59 Tacoma Daily Ledger, August 13, 1889.

60 The article on mines and mining was discussed and debated on the twelfth of August and only the final voting on its adoption was done on the thirteenth.

busiest week of the convention, as far as number of articles treated was concerned. Admittedly, some of these articles did not receive the attention they should have received. But most of the delegates were of the opinion that the nature of none of those treated during that week warranted more painstaking consideration.

Two other articles that were not only not given detailed attention but were treated with a certain amount of facetiousness were the articles on the state seal and the state boundaries.

Delegate O. A. Bowen of the State Seal Committee presented three seals from which the delegates were to select their choice. Two were pictures of George Washington. One was encircled by the words, "Our varied industries invite you," and the other was the same picture with the word "Welcome" and the date "1889." The third seal presented a picture of Washingtonian scenery, showing the varied resources of the state encircled by the words, "Westward the star of Empire takes its way."⁶¹

Delegate Dunbar moved to adopt the picture of George Washington but to change the encircling words so as to read, "First in peace, first in war, and first in the hearts of real estate agents."⁶² This motion failed. Delegates

61 The Minutes, p. 381.

62 Tacoma Daily Ledger, August 20, 1889.

Sharpstein and Turner moved to adopt the picture of Washington but to substitute the words, "The Seal of the State of Washington, 1889," and this was done.⁶³

Delegate Comegys, Chairman of the Committee for Boundaries, asked for and received the convention's permission to telegraph Washington, D.C., for definite information on the boundaries of Washington.⁶⁴ Using the answer he received to guide him, Comegys framed the Boundaries Article and presented it to the committee. The article as presented was technical and detailed; opposition to its passage arose partly from a spirit of revenge, and partly from more technical reasons.

Oregon, on her admission to statehood, had tried to annex the Walla Walla region of Washington Territory, and now the delegates wanted to avenge this slur on Washington's integrity and annex part of Oregon. Some of the delegates combined this annexation desire with the desire of other more serious delegates who wanted to extend Washington's boundary to the main channel of the Columbia River. Comegys claimed that because of these desires the "convention wanted him to steal a slice of Oregon."⁶⁵

The "slice of Oregon" controversy had its origins in the days Oregon was granted statehood. At that time her

63 The Minutes, pp. 403-404.

64 Ibid., p. 119.

65 Tacoma Daily Ledger, August 11, 1889.

northern boundary was established as being in the middle of the north ship channel of the Columbia River. There were two channels in the Columbia but the northern one was the deepest, safest, and most generally used. Oregon made certain that her rights were extended to this channel by placing her northern boundary in the middle of it.

By the time Washington became a state, the north ship channel was so choked with accretions of sand that it was not available for vessels of deep draft, being only 24 feet deep in 1889. The south channel at this time was the main channel. Consequently Washington found herself with no control of the Columbia's main channel, her river pilots were discriminated against by Oregon, and her fishermen had to follow Oregon fishing regulations. The members of the constitutional convention wanted the Washington boundary to extend into the main channel, thus alleviating these conditions, forgetting that Oregon's jurisdiction extended to the north channel. It was the area lying between the middle of the north channel and the middle of the south channel that composed the "slice of Oregon" the various convention delegates wanted to "steal."⁶⁶

Comegys did not change the article so as to "steal a slice of Oregon" but returned it to the convention as it was. One newspaper's coverage of the debates on the representation

⁶⁶ George C. Lay, "The Boundary Dispute between Washington and Oregon," Journal of American History, Vol. VII, No. 3, pp. 1153-1167.

of the article warrants quoting:

A number of delegates explained that it was entirely impracticable, at this time with our limited militia to wrest from the domain of Oregon any portion of her territory, and possibly President Harrison in his superior wisdom, might withhold his much needed proclamation [of statehood] if any attempt were made in the constitution to annex a slice of our sister State. Notwithstanding this sound reasoning and timely warning 24 men were opposed to accepting the northern boundary of Oregon as the southern boundary of Washington. 67

However, the article was adopted, and the boundary as provided was later substantiated in a Supreme Court decision.⁶⁸

Another article that received but scanty consideration was the Article on Schedule. It had for its purpose the formulation of a procedure to facilitate the change from territorial government to statehood, to provide for the election of the first state officers and the ratification by the people of the articles on suffrage, prohibition and the constitution itself. The Schedule Article of the Proposed Washington State Constitution of 1878 was the model for the Schedule Article as

67 Tacoma Daily Ledger, August 20, 1889.

68 In 1908 Washington claimed the middle of the usable channel as her boundary, but the Supreme Court said, "... when in a great river like the Columbia, there are two substantial channels and the proper authorities have named the centre of one channel as the boundary between the States bordering on that river, the boundary as thus prescribed, remains the boundary subject to the changes in it which come by accretion, and is not moved to the other channel, although the latter in the course of years becomes the most important and properly called the main channel of the river." (211 U.S., 127; 214 U.S. 205.)

prepared by the Schedule Committee.⁶⁹

The convention clarified the position and status of the courts and their justices in the transitional period between territorial government and statehood. It made provisions for the balloting on the question of suffrage and prohibition, and the ratification of the constitution.⁷⁰

Before the article received its final vote of approval, it was moved that it be left open to serve as a "catch-all" for any measures the convention might decide to adopt after the other articles were adopted.⁷¹ This course of action was a wise move as later events proved. Not until the last day of the convention was the article fully adopted.

69 Composed of Delegates Sharpstein - Chairman, McElroy, Buchanan, Lillis, J. M. Reed, Comegys, Gray, Dickey, and Jamieson.

70 Tacoma Daily Ledger, August 20, 1889; The Minutes, pp. 393-395.

71 The Minutes, p. 451.

CHAPTER VII

LANDS AND WATERS

In the opening days of the convention it was more than apparent that the major issue the delegates would encounter was the issue of school lands, harbors, and tide lands, but there was a strong, ever present tendency to leave these issues to the legislature. If the convention decided to treat the question, two alternatives confronted it: to provide for the sale of these lands, or to provide for perpetual state ownership with lease provisions permissible.

Corporations, real estate companies, and the railroad companies all wanted to gain ownership of these lands. They had their lobbies at the convention urging that the delegates provide for their sale or that the delegates leave the entire question of their disposition to the legislature. Of especial interest to them were the tide lands that surround the harbor areas. Because of their position these lands were very valuable to them.

The question of harbors, although closely linked to that of tide lands and considered by many to be the same as the tide land question, posed new and distinct problems for the delegates and here will be treated as a separate issue as

far as possible. The convention treated the question of tide lands and school lands as a single question at first but later proposed two articles to cover the two issues. Here again the two will be treated separately.

The question of harbors was one of the more important questions that the convention had to treat. This importance came mostly from the fact that harbors are surrounded by tide lands, and these lands which make up the harbor rims are extremely valuable. Tide lands are those flat level lands lying between ordinary high tide and ordinary low tide, submerged when the tide is full, exposed when it ebbs. Harbors are bordered by tide lands, the harbor rim is composed of them, but most of the tide lands lie outside of the harbors.

The Harbor Committee and the State, School, and Granted Lands Committee met in a joint session and decided that the tide lands that form the harbor rims would be treated by the Harbor Committee, while those lands not bounding harbors would be treated by the other committee.¹ The Harbor Committee was to frame an article providing for the disposition of the tide lands within the harbors, and the State, School, and Granted Lands Committee was to provide for the disposition of the remaining tide lands.

To preside over the Harbor Committee, Convention Chairman Hoyt placed Delegate D. E. Durie. This appointment

1 Tacoma Daily Ledger, July 11, 1889.

was not well received by the convention. Durie was a Seattle Republican and held several tide land lots in Seattle and was a stockholder of the Seattle Dry Dock and Ship-Building Company. His ability and mercantile activity had aided his election to the Seattle City Council.² Now, when he had been named chairman of the Harbors, Tidewaters, and Navigable Streams Committee, the delegates claimed that any individual so personally interested in the tide lands should not be on the committee.³ Chairman Hoyt explained that the over-all tide land question would be handled by the Committee on State Lands, and the objection to Durie's nomination was dropped.⁴

The delegates knew that many companies and individuals wanted the tide lands lying within the harbor areas. Most transportational companies wanted these lands for docks and wharves that would border the harbors. The companies either wanted these lands sold or given to the harbor cities.⁵ They felt sure that it would be easy to persuade the city councils to sell these lands to them. Hence they lobbied for the sale of the lands by the state or the donation of them to the cities, either way they hoped to gain possession of them. It

2 Quentin S. Smith, "An Index to the Minutes of the Convention," p. 198.

3 Tacoma Daily Ledger, July 10, 1889.

4 Ibid.

5 Seattle Post-Intelligencer, July 18, 1889.

was later asserted that one of the greatest struggles ". . . that took place in the constitutional convention of the state of Washington was that between the advocates of state control of all harbor facilities and those who believed in private control thereof."⁶

The majority of the delegates advocated state control of harbor facilities and withstood attempt after attempt by the other delegates to give this control to private interests or to the cities. The constitution that was framed showed the complete victory of these state control advocates.

The Harbor Committee presented a report that reserved control of all harbor facilities to the state.⁷ Section one of this report provided for a harbor commission whose duty it was to locate and establish harbor lines in the navigable waters of the state, wherever such waters were within, in front of, or within a mile of a corporated city. It continued,

Such harbor lines shall be so located and established that the waters where such lines shall be located and established shall not be less than twenty-four feet deep at ordinary low tide. The state shall never give, sell or lease to any private person, corporation or association any rights whatsoever in the waters beyond such harbor lines, nor shall any of the areas

6 Fourth Biennial Report of the Board of State Land Commissioners to the Legislature of the State of Washington, 1901, p. 15.

7 The Harbor Committee, officially the Harbor, Tidewater, and Navigable Streams Committee, was composed of Delegates Durie, Prosser, R. S. Moore, West, Power, Schooley, Stevenson, Weir, and Turner.

lying between any harbor line and the line or ordinary high tide and within not less than two hundred feet nor more than six hundred feet of such harbor line (as the commission shall determine) be sold or granted by the state nor its right to control the same be relinquished but such area shall be forever reserved for landings, wharves, streets and other conveniences of navigation and commerce. 8

Section two of this report vested control of the harbor facilities in the hands of the cities but allowed the state to resume control at any time. The last section gave cities permission to extend streets over the tide lands.⁹

This report provided for the establishment of the inner or true harbor lines and the outer harbor lines. Harbor lines enclose areas of water that must be wide enough for ships to pass and deep enough to allow ships with deep draughts sufficient water depth to navigate during low tide, and yet touch water shallow enough to facilitate construction of wharves, docks and piers. These requirements were accomplished by the clauses stipulating that the harbor lines be two hundred to six hundred feet apart and that the depth of water be twenty-four feet. Lands lying between the harbor lines and the high tide line was reserved for the state in the last clause of section one, and in section two the cities were given the right to control their harbors although the state owned them. Delegate Weir presented a minority report from

8 The Minutes, p. 326.

9 Ibid.

the Harbor Committee that gave cities ownership of their harbors.¹⁰

The minority report was not accepted by the convention which began discussing the majority report.¹¹ A group of delegates objected to the reservation of the tide lands that form the harbor rim for the state. Sullivan, the spokesman for this group spoke of the owners of mills, factories and industries that were located on the tide lands in the harbor areas. He told of the large sum of money spent improving these lands by the construction of docks, mills and wharves. He claimed that only corporate and private financing could so improve these lands, the state would or could not expend the money needed to make similar improvements.¹² This group that was represented by Sullivan wanted the lands lying between the harbor lines and high tide line sold by the state not reserved for it.

Harbor Committee Chairman Durie said that private companies could buy these tide lands and were not excluded by this report. Delegate Weir, who had filed the minority report, disagreed with Durie's contention and claimed the report prohibited private enterprise from owning land or developing the harbor.¹³ Delegate Turner bluntly stated that both Durie and

10 The Minutes, pp. 327-328.

11 Tacoma Daily Ledger, August 14, 1889.

12 Seattle Post-Intelligencer, August 14, 1889.

13 Ibid.

Weir were trying to protect the claims of those people and corporations who already held tide lands. Such claims, he said, the courts had ruled invalid despite the extensive improvements the owners had made on these lands.¹⁴

The next day Harbor Committee Chairman Durie amended to allow cities to control their harbors and harbor rims. Before discussion on this amendment could begin, J. Z. Moore of Spokane Falls presented a resolution that graphically portrayed many eastern delegates' distrust of the connivings of the delegates from the Sound country in their treatment of the waterfront question.

Resolved: That it is the sense of this convention that if members of it have possession or any claim whatever of any of the lands of the state or territory of Washington, fairness and justice to the interest of the people demand that those members shall declare their interests to the convention and refrain from voting on all questions affecting such property directly or indirectly. ¹⁵

This resolution seemed directed at Durie, however, Moore alleged that he knew that 75 per cent of the members of

14 The Supreme Court of Oregon had ruled that only the state could dispose of the tide lands, any other claim not given by the state itself was not binding even though the federal government had given patents to the land or extensive improvements had been made on them through the medium of "squatter's rights." Oregon Reports, "Report of Cases Decided in the Supreme Court of Oregon," 1876-1877, Vol. VI, p. 409. More will be said of this later in connection with the tide land article.

15 Tacoma Daily Ledger, August 14, 1889.

the city councils on the Sound were tide land grabbers and now he wanted to know how many in the convention could be thus catalogued.¹⁶ Delegate Cosgrove protested the resolution, claiming he could not see its intent. He claimed it impugned the motives of all the delegates and would halt all action on the article if over half of the members refrained from voting because of it. Moore replied, "I do not expect the gentlemen to see anything until that cap he wears is removed and a surgical operation is performed on his cranium."¹⁷ As Cosgrove rebutted that he did not expect to gain Moore's eloquence but he did hope to avoid his vulgarity, the chairman recessed the convention.¹⁸

Later, Durie replied that "he was not moved by cowardly insinuations or blatant demagogy."¹⁹ He told the convention of his position in the Seattle Ship-Building Company and declared that his move to give complete harbor control to the cities would deprive his own company of its tide flat holdings, a proposition by which he himself would lose money. Durie's confession was considered by the delegates but his amendment was voted down.²⁰

16 Ibid.

17 Ibid.

18 Ibid.

19 Ibid.

20 The Minutes, pp. 355-356.

Delegate Browne proposed an amendment that, by not stating the depth over which the harbor lines were to be placed, allowed the harbor line commission more latitude in establishing the lines. The amendment stipulated that the inner and outer harbor lines could be between fifty and six hundred feet apart, and although the amendment reserved the tide lands or harbor rims for the state, it allowed for their lease for thirty-year terms.²¹ After this amendment was adopted the third section of the original committee report was adopted. This section gave cities the right and permission to extend streets over the harbor rims.²²

In defending his resolution J. Z. Moore insisted that the city councils of the port cities in the territory were in back of the move to give cities complete control of the harbors. He charged that their agents were in Olympia "with a sack full" to gain constitutional permission for the city councils to sell out the tide lands to the land grabbers. If such a condition came about, he said, there would be "row upon row of graves of statesmen on these lands."²³ Moore's warning was heeded and the convention honestly and successfully provided for the perpetual state ownership and control of the harbor rims.

21 Tacoma Daily Ledger, August 14, 1889.

22 Ibid.

23 Ibid.

The harbor commission that the convention provided in the constitution surveyed the harbors, but private waterfront interests in the large ports of the state contested its work and managed, by court proceedings, to halt its activities for a year. At one time there were eight suits against the harbor commission before the courts.²⁴ However, the legality of the work of the harbor commission was established and it continued its work. Later the legislature provided lenient lease terms for those who had made improvements on the harbor rims.²⁵

The convention had postponed debate on the School and Tide Land Article in order to dispose of the Harbor Article, but once this latter was adopted, the convention turned to the article on the school lands.

The Enabling Act set apart land sections sixteen and thirty-six of every township, about two and a half million acres of land, for the support of the public schools of the state.²⁶ It also reserved a hundred thousand acres for a state scientific school and a hundred thousand acres for normal schools.²⁷ It was hoped that the amount of land thus provided, if disposed of wisely, would provide more than sufficient funds

24 Second and Final Report of the Harborline Commission, Olympia, State Printer, 1893, pp. 8-17.

25 Fourth Biennial Report of the Board of State Land Commissioners, 1901, p. 20.

26 Enabling Act, section 10.

27 Ibid., section 17.

to establish and perpetuate the schools in the state.²⁸

Consensus of the electorate in the Territory was that the school lands should never be sold; the state should let contracts to private companies to harvest the timber found on school lands and in the same way provide for the mining of minerals and stone found on these lands. The remaining lands, it was thought, should be leased for agricultural or municipal purposes.²⁹ Among the delegates the same opinion held sway.

Some delegates thought that by leasing the school lands a constant income for the school fund would be insured. They believed that contracts could be let to sell timber and mineral resources found on the lands, or these lands could also be leased but at a much higher price than lands not containing these resources. These delegates believed that by leasing the school lands the schools would always be assured that the land would bring its true value, for if the value of the land went up, the rent would also rise; while if the lands were sold, any future rise in value would not increase the school fund.³⁰

The objections to leasing the school lands centered around the Enabling Act's limitation of such leases to five-year terms. Some delegates thought this stipulation would

28 The Asotin Sentinel, May 10, 1889.

29 Ibid.

30 Delegate Griffitts' speech on the convention floor. Tacoma Daily Ledger, August 15, 1889.

see the land exploited by the lessee, while being left with no permanent structures on it at the end of the lease period. Another objection claimed that the immediate monetary return from leasing would be much smaller than that received from selling the lands and hence would retard the growth of the working capital of the school fund, exclusive of the value of the land itself.³¹

Those delegates that advocated selling the school lands claimed it would immediately establish a working school fund and would result in the erection of permanent structures on these lands. They believed that contracts should be let to private companies to harvest timber and mineral resources, thus gaining for the state the full value of these lands which could afterwards be sold. The objection to this plan to sell was that once the lands were sold, the school fund would be destitute of further sources aside from investments and legislative appropriations.³²

Either selling or leasing the school lands, if done wisely, would have resulted in the establishment of a school fund sufficiently large to develop a good school system. It is difficult to determine if one method would have been more successful than the other. The sale of the school lands has resulted in a still growing school fund of \$44,694,677, almost

31 Delegate Dunbar's reply on the same day.

32 Tacoma Daily Ledger, August 15, 1889.

twice the amount the advocates of selling the school land claimed would be raised by that method.³³ The delegates realized that either method could work only if the interest of the state was adequately safeguarded. Consequently they attempted to provide constitutional safeguards to insure the proper functioning of the method by which they chose to allow the state to dispose of the school lands.

Many of the delegates had been elected on platforms containing a plank stating that all school lands should be available for lease.³⁴ The Republican and Democratic party conventions in Spokane Falls adopted resolutions advising the state never to sell the school lands.³⁵ The Republican party in Walla Walla also used this principle in its campaign.³⁶ The newspapers of Eastern Washington were strongly in favor of leasing school lands; the newspapers of Western Washington were divided on the question, some wanting them leased, others wanting them sold.³⁷

33 Thirty-Ninth Biennial Report of the Superintendent of Public Instructions, July 1946 to June 1948, p. 81.

34 Among these were Delegates Prosser of North Yakima, Griffiths and Browne of Spokane Falls, Hicks of Tacoma, Blalock of Walla Walla, Jones of Port Townsend, and McElroy of Seattle.

35 Spokane Falls Review, May 9, 1889.

36 Walla Walla Weekly Union, May 11, 1889.

37 The Spokane Falls Review, Spokane Northwest Tribune, Walla Walla Weekly Union, the Asotin Sentinel, the Seattle Post-Intelligencer and the Walla Walla Statesman favored leasing

The tremendous value of these lands made the manner of their disposition more than an academic question. The school lands were known to be rich in timber and minerals, and those lands lying within or near cities were made valuable merely by their location. The delegates seemed confirmed in their attitude to lease but not sell the school lands, but from the convention's opening days letters and telegrams poured in urging the delegates to provide for their sale instead of providing for their lease.³⁸ The Puget Sound Weekly Argus, the Tacoma Daily Ledger, and the Washington Standard of Olympia repeatedly editorialized on the dangers and pitfalls to be encountered if the delegates provided for leasing these lands.³⁹ They claimed that if the state leased these lands, it would soon find itself in the various business enterprises, such as farming and manufacturing. Leased land would soon be covered by ramshackle constructions, they claimed, for what lessee would build anything of a permanent character on land that was not owned?

The real estate lobby that was in Olympia wanted the school lands sold, not leased, and made every effort to induce

these school lands. The Olympia Washington Standard, the Tacoma Daily Ledger, and the Port Townsend Puget Sound Weekly Argus favored selling them.

38 Portland Telegram, August 11, 1889, as quoted in Airey, "A History of the Constitution," p. 512.

39 Puget Sound Weekly Argus, July 11, 18, 25; the Washington Standard of May 24 and June 7, 1889; the Tacoma Daily Ledger, July 15 and 27, 1889.

the delegate to provide for their sale. As the convention progressed, the pressure of the lobby was felt by the delegates and their attitude changed.⁴⁰ Many of those delegates who had been elected on platforms stating that they would not sanction the sale of school lands came to agree with the lobby and decided that it would be best to sell them but under sufficient restrictions to insure the state school fund all the money that was its due. The turning point in this conversion was reached before the convention formally treated the school lands article. In the debates of the earlier days of the convention the desire to lease the school lands was clearly shown, but after the school land article was presented, the delegates showed clearly their intention to sell them. Attempts were made to amend the school land article to provide a lease system but the major effort of the delegates was to safeguard the interest of the state in their sale.

The Land Article that came before the convention on August 14 provided for the sale of the school lands at public auction to the bidder who offered the highest bid above the appraised value. The report limited the fractional amount of land that could be sold before 1900 to two thirds and limited the amount of land sections that could be sold in one parcel.⁴¹ Delegate Griffitts proposed a substitute that would provide

40 Seattle Post-Intelligencer, August 9, 1889.

41 The Minutes, p. 220.

for leasing rather than selling them. His proposal was opposed by Dunbar and Cosgrove who said the Enabling Act restricted leases on the school lands to five-year terms.⁴² They claimed that such short leases would see the lands exploited and no permanent construction built thereon, for who would build on land controlled by the whims of the legislature? Delegate Turner claimed that leasing the school lands was too slow a method of obtaining a working capital for the school fund which was needed immediately if a school system was to be established in the new state.⁴³

Two days later, August 16, Griffitts again tried to introduce a measure allowing the state to lease the school lands. His motion failed of passage, however, even though Delegate Prosser gave a two-hour speech in its favor. Prosser quoted statistics from reports from Illinois, Wisconsin and Michigan. He claimed that because the school lands of these states had been sold instead of leased, the purchasers rather than the state had benefited. The Michigan school lands had been appraised at \$50,000,000, but Michigan realized only \$3,381,963 from their sale. Illinois' school lands were appraised at \$50,000,000 also, but still the state netted only \$1,165,041 in selling them. Prosser claimed that the mismanagement of funds in California amounted to a loss to the state

42 The Enabling Act, section 11.

43 Tacoma Daily Ledger, August 15, 1889.

of \$100,000,000, "one of the most stupendous robberies in the annals of history." On the other hand, Prosser cited the case of Nebraska who had leased her school lands and her school system had become a good example of sound financing.⁴⁴

Despite this long and statistical speech the amendment by Griffitts to lease the school lands and to provide a clause letting timber and mineral resources on them be developed by contract was defeated.⁴⁵ It was at this stage of consideration that the entire article was referred back to the committee, for the article as presented included sections on the tide lands, and while there was general agreement regarding the school lands, the tide land issue met strong opposition. It was hoped that by separating the tide and school land questions into separate articles the sections that pertained to the school lands would be adopted even if the tide land sections were not.⁴⁶ The committee for separate articles placed the section allowing the sale of school lands back before the convention on August 20, and it was readily adopted.⁴⁷

The original report of the state land committee contained four sections pertaining to school lands. The first

44 Ibid., August 17, 1889.

45 The Minutes, p. 382. Thirteen of the thirty easterners and three of the thirty-six westerners that voted favored Griffitts' amendment.

46 Ibid., pp. 402-403. August 19, 1889.

47 Ibid., p. 427.

section has been treated above, the second section was presented accompanied by two minority reports. The majority report designated that school lands could be sold only to the highest bidder at auction and only if the price offered was the same or higher than the appraised value of these lands. One minority report provided for the same manner of disposition but stated that the lands were to be appraised in such manner than any improvements on them would not influence their value.⁴⁸ This provision would benefit those who had improved the lands despite their lack of title to them. The other minority report resembled the majority report except that it provided that only one section of land could be sold to any one person or corporation at any one time.⁴⁹

Despite the earnest pleas of those who had signed the minority reports, the majority report was adopted. The only change made in it before its adoption was to allow the legislature to confirm the sales of the university lands if it wished. This allowance for confirmation of the sales arose because the lands the University of Washington had been granted in 1854 and 1864 had already been sold before the Enabling Act which reaffirmed the University's title to them was passed.⁵⁰

48 This report was signed by Delegate Cosgrove.

49 The Minutes, p. 263. This report was signed by Delegates Browne, Schooley, Travis and Suksdorf.

50 Enabling Act, section 14.

By allowing the legislature to confirm the sales of these lands the purchasers could clarify their title to these lands even though the Secretary of the Interior had not validated their sale, and the lands could be written off the federal government's books.⁵¹

In the convention there was an unsuccessful move to combine the University of Washington with the scientific school for which the Enabling Act donated one hundred thousand acres of land. Then Delegates Sharpstein and Crowley, both from Walla Walla, moved to confirm constitutionally the earlier sale of the University lands.⁵² This move was defeated on the grounds that since the Secretary of the Interior had not approved all of the sales but had questioned the sharp practices involved, the constitution could not confirm what might

51 Victor John Farrar, "History of the University of Washington" (Thesis, University of Washington), p. 21. During the Civil War devalued "greenbacks" were used by the buyers to pay for the school lands although in the west all but government transactions were conducted using gold as the standard of exchange. Mr. Bagley, President of the University, kept his books on the gold standard basis while receiving "greenbacks" for University land. Consequently there was a discrepancy in his books and full value of the land was not received. In 1867 because of this discrepancy the Territorial Legislature closed the University. The few sharp transactions that were reported in the sale of these lands made the Secretary of the Interior question the validity of their sale.

52 The purpose of this move is not clear, apparently it was an attempt to obligate the state to support the University, and, more probably, it was an attempt to clarify the title the purchasers of these lands held.

be illegal.⁵³ Delegate Browne of Spokane Falls proposed to leave the question of confirming these previous sales and the question of uniting the University with the scientific school to the legislature, and this was done.⁵⁴

Section three of the original report of the state land committee limited the sale of school lands in such a manner that only one third of them could be sold before 1895, and only two thirds before 1900.⁵⁵ The delegates demanded more stringent safeguards on the sale of school lands and rejected the section. Later the committee changed the section to meet this demand and allowed only one-fourth of the school lands to be sold before 1895, and only one half before 1905. With this stricter limitation the delegates agreed.⁵⁶

One section in the original report restricted the sale of school lands, only a quarter section could be sold in any one parcel. It also stated that a section of land worth \$200.00 or more an acre was to be divided into blocks and lots if these sections were in or near cities. These blocks could then be sold but only one at any time.⁵⁷ Delegates Browne, Travis, Schooley, and Suksdorf tried to place stipulations on

53 Tacoma Daily Ledger, July 16, 1889.

54 Ibid.

55 The Minutes, p. 220.

56 Ibid., pp. 454-455.

57 Ibid., pp. 220-221.

the report which would prevent the sale of all such lands before their value increased through the development of the state.⁵⁸ These delegates succeeded only in reducing from \$200 to \$100 the worth of land required before it could be subdivided.⁵⁹ When the section appeared in the separate school land article it was not substantially changed and the delegates reaffirmed their approval of it.

The day before the convention adjourned, the entire school land article was approved by a vote of forty-eight to twenty-three.⁶⁰ Delegates Prosser, Jones, Griffitts, and Blalock vigorously protested this adoption and filed their protests. They claimed that leasing the school lands and selling the stone and timbers off them would provide a larger school fund than would be raised by selling the lands. The cheap lands offered for sale by the Northern Pacific Railroad Company and the federal government would lower the demand and hence the price that these lands would bring. They concluded that there was too much pressure on the legislature by interested groups to leave the sale of school lands in its hands.⁶¹ However, later events proved that the constitutional provisions established to protect the state's interest in the sale of the

58 Tacoma Daily Ledger, August 17, 1889.

59 Ibid.

60 The Minutes, pp. 434-435.

61 Ibid., pp. 454-455.

school lands were adequate enough to fulfill their purpose. The convention had boldly met the problem of disposing of the lands in a manner that would provide a school fund for the state and made all the provisions necessary to secure that end. Most of the faults or failings of the policy of selling the lands instead of leasing them arose from subsequent legislative activity. In 1890 the legislature was informed of the need to enact laws to protect the state's interest.

Attempts are being made by certain individuals to obtain title to valuable portions of the school lands of the state under the claim that they contain deposits of minerals. Lands aggregating many thousands of dollars in value will be lost to the state unless these claims are vigorously contested. Railroad companies are building their lines of roads over school lands without having secured the right to do so under the provisions of existing laws. Much of the valuable timber on school lands is being destroyed or removed by trespassers. The law relating to these subjects is inadequate and should be so amended and enlarged in its scope as to furnish the most ample protection possible to the interests of the state in said lands. 62

The next year the legislature learned that because the lands had not as yet even been surveyed 100,000 acres had been lost from the grant of school lands, a loss of \$1,000,000.⁶³

The lobby had not been too successful in attaining its desires at the convention. The harbor and harbor rims that

62 First Biennial Report of the Commissioner of Public Lands to the Legislature of the State of Washington, 1890, p. 10.

63 Message of Charles Laughton, Lt. Gov. and Acting Governor to the Legislature, 1891, p. 60.

the lobby wanted sold were not sold but were placed in the firm control of the state. The school lands were to be sold, not leased, due to the pressure of the lobby and the writers of the various newspapers, letters and telegrams that flooded the convention, but strict controls were placed on the sale of these lands. Now the remaining land issue, the tide lands, was to come before the convention, and the lobby, which wanted nothing placed in the constitution concerning these lands, exerted its main effort to attain its goal, but events were to show that it only partially succeeded.

The courts had decided that the state owned the tide lands and said,

The ground upon which the right of a state to the tide lands within its limits is said to rest, is 'the sovereign control over the easement or right to navigation.' (Gray v. Hermana, 5 Cal. 74.) 64

The delegates knew this and Judge Hill made them more aware of it when he quoted the above words to the convention.⁶⁵ The delegates knew that the state owned the tide lands, but they did not know if the patents to the tide lands given by the federal government to individual settlers were valid. Judge Hill and Delegate Judge Turner told the convention the court's

64 Oregon Reports, "Cases Decided in the Supreme Court of the State of Oregon," 1876-1877, Vol. VI, p. 409.

65 Tacoma Daily Ledger, July 14, 1889.

decision on this question.⁶⁶

Tide lands, those that are covered and uncovered by the ebb and flow of the sea, belong to the state ... by virtue of its sovereignty. The United States government has no authority to so dispose of lands within a territory as to make it impossible to admit such territory into the Union upon an equal footing with the other states. In all matters that touch the sovereignty of the future state, the general government is simply a protector thereof, until such time as the territory becomes a state. ⁶⁷

The state could, however, recognize patents and consider them valid if it so desired. Either the constitution or the legislature, if the question was left to that body, could give this recognition. To grant this recognition or not was one question the delegates to the constitutional convention had to answer; the state's rights had to be protected, but to brush aside the claims of old settlers to the tide lands seemed cruel and unjust. However, it was corporation claims not the old settlers that brought pressure to bear on the convention to recognize claims to the tide lands.

In Tacoma various corporations had improved the tide flats by constructing mills, docks, and wharves on them. It was claimed that over \$2,000,000 had been expended for this construction.⁶⁸ In Seattle also great improvements had been

66 Ibid., and August 16, 1889.

67 Oregon Reports, "Cases Decided in the Supreme Court of the State of Oregon," 1876-1877, Vol. VI, p. 408.

68 Tacoma Daily Ledger, August 14, 1889.

made on the tide lands by various corporations and individuals who were now most desirous of buying these lands. The corporation most interested in the recognition of previous claims to the tide lands in Seattle was the Oregon Improvement Company which held claims to tide lands on Elliott Bay dating back to 1873.

In 1873 the city of Seattle in a contract with the Seattle and Walla Walla Railroad and Transportation Company had given title to extensive tide land acreage in Elliott Bay south of King Street in exchange for the construction of a railroad. The territorial legislature confirmed this grant under the stipulations that fifteen miles of road be constructed within three years and the company showed definite interest towards completing a railroad from Seattle to Walla Walla.⁶⁹ The fifteen miles of road were built in the stipulated time, but little interest was manifested towards building a line to Walla Walla, and this lack of interest drew the distrust of the populace. The Oregon Improvement Company had absorbed the Seattle and Walla Walla Railroad Company and now wanted this grant confirmed in the constitution.⁷⁰

The problems before the convention then were whether to recognize United States patents and corporate claims to the

69 Laws of Washington Territory, 4th Biennial Session, 1873, p. 577.

70 Tacoma Daily Ledger, July 14, 1889.

tide lands, whether to sell or lease these lands, or whether to leave these questions to the legislature.

Consensus of opinion in the Territory was that the constitution should declare the state's ownership of tide lands. Opinion was divided as to whether federal land patents should be recognized or not, but the recognition of corporate claims was definitely not wanted. Among the delegates the general opinion, when the convention first convened, was that all tide lands should be leased not sold.⁷¹

The location of the tide lands made them invaluable for the construction of mills, docks, wharves and warehouses. The hilly nature of Washington's port cities demanded that the level tide flats be used extensively, for with but little effort they could be reclaimed from the sea and used for building cities. One newspaper estimated that the tide lands near the cities, then worth between twenty-five and fifty dollars an acre, would be worth five hundred dollars an acre when the cities and their industries developed.⁷²

Numerous individuals and corporations, claiming "squatter's rights" had started construction on the tide lands and others could and would do the same thing if the constitution did not declare the state's ownership of these lands. If such a declaration was made in the constitution, the state

71 Portland Morning Oregonian, July 4, 1889.

72 Olympia Washington Standard, May 24, 1889.

could confiscate the improvements on the tide lands and would have legal authority to keep other "squatters" off the lands. Those corporations that had already made improvements on the tide lands, and those that were planning to, sent agents to the convention to lobby for the exclusion of such a declaration in the constitution.

The value and demand for these lands made the tide land question an issue of great importance and interest in the convention, and the delegates waited to see whom Chairman Hoyt would place on the committee to treat the subject. Before the committee appointments had been made, Thomas Cavanaugh, the convention's printer, had written to ex-Governor Ferry, saying,

I have not seen Hoyt, but some friends should put him upon his guard against several parties here in the convention; Turner, Manley, Mires, Stiles, Griffitts, J. Z. Moore, Prosser, and several more I can name, who should not be upon the committee to frame any section on tide or other lands.... 73

All these men had strong ideas on the disposition of state lands, and later events saw them lead the convention in the debates over the land articles. Hoyt might have been warned about these men that Cavanaugh mentioned, because none of them were on either the Harbor Committee or the State Land Committee.

73 Thomas Cavanaugh to E. P. Ferry, July 7, 1889, Ferry Documents.

Chairman Hoyt selected Delegate Dunbar to preside over the State Land Committee. Dunbar was an inland man (Goldendale), a Republican lawyer who, the Post-Intelligencer said, was a vigorous progressive leader of men, effective and ready in speech and the perfect man to head such an important committee.⁷⁴ Pierce County felt itself vitally concerned with the outcome of the tide land question and objected when none of its delegates were placed on the Land Committee. Hoyt made arrangements to place two Pierce County delegates on the committee, thus quieting these objections. This addition made the State Land Committee the largest committee in the convention.⁷⁵ One newspaper complained that although the committee was the largest in the convention, it was the weakest because of the quality of men who composed it.⁷⁶

The State Land Committee received the various, numerous petitions that were referred to it. The Tacoma Typographical Union Number Seventy submitted a proposition asking that state owned lands never be sold but be "reserved forever."⁷⁷ The Seattle Chapter of the Knights of Labor submitted a similar

74 Seattle Post-Intelligencer, July 28, 1889.

75 Tacoma Daily Ledger, July 11, 1889.

76 Puget Sound Weekly Argus, July 11, 1889. The Committee was composed of Delegates Dunbar, Browne, Warner, Dickey, Minor, Henry, Shoudy, Schooley, Eldridge, Suksdorf, Travis, Cosgrove, Eschelman, Joy, Kellogg, Stiles, and Bowen. Nearly half of these members were from Eastern Washington.

77 The Minutes, pp. 55-56.

proposal.⁷⁸ Delegates Griffitts, Dyer, Suksdorf, Eschelman, and Cosgrove also petitioned the convention for permanent ownership of the state lands.⁷⁹ Delegate Prosser of North Yakima introduced a resolution stating that it was the convention's intention to prevent the sale of state-owned lands and to reserve perpetual ownership of them for the state.⁸⁰

The State Land Committee received Delegate Prosser's resolution but before passing on it decided to seek precedent and legal advice on the disposition of these lands. The Proposed Constitution of 1878, which they looked at, merely mentioned that the tide lands belonged to the state and that government patents to these lands were valid.⁸¹ Judge Hill in his Proposed Constitution for Washington recommended the gradual sale of these lands under strict legislative control. This gradual sale and legislative supervision would prevent the dissipation of the moneys from these sales and would insure the receipt by the state of the full monetary value of the lands.⁸² The committee invited Hill to explain his recommendations further before the convention.⁸³

78 Ibid., p. 171.

79 Ibid., pp. 57, 59, 109; Tacoma Daily Ledger, July 11, 12, 1889.

80 Ibid., p. 59.

81 Article XV, section 10.

82 Portland Morning Oregonian, July 4, 1889.

83 Tacoma Daily Ledger, July 13, 1889.

Judge Hill told the convention that the state owned all the tide lands and that government patents to these lands were not legal unless the convention decided to verify them by declaring their validity in the constitution. The hilly nature of the port cities in the state, said Hill, required that transportational activity in these cities use the flat tide lands. To aid this activity, Hill recommended that the tide lands within the city limits be given to the cities. First right to buy tide lands should be given to persons and corporations who had improved the tide lands, he said. If corporations and individuals rush to improve the tide lands before the constitution is ratified by the people, Hill said in conclusion, the improvements on these lands would be such that the convention could "feel gratified in the knowledge that its work has not been in vain."⁸⁴

Other legal experts addressed the State Land Committee. Attorney J. P. Gale of Seattle appeared in behalf of the tide land holders. He advocated selling the tide lands and recognizing the claims of his clients.⁸⁵ Judge Bush of Seattle spoke to the committee when Gale finished and was in turn followed by D. W. Smith and George H. Jones of Port Townsend. All advocated the sale of the tide lands and the gift of prior purchase rights for settlers and industries that had made

⁸⁴ Ibid., July 14, 1889.

⁸⁵ Seattle Post-Intelligencer, July 18, 1889.

improvements on them.⁸⁶

The Seattle Post-Intelligencer claimed that these lawyers who addressed the state land committee had been hired to lay legal opinions favorable to the "tide land grabbers" before the convention.

By this means legal opinions bought and paid for are made to appear as abstract and disinterested estimates of the law. ⁸⁷

The Post-Intelligencer was convinced that other groups besides these lawyers were in Olympia doing all they could to secure a constitutional provision for the sale of the tide and school lands. They mentioned that the Northern Pacific Railroad Company was anxious to buy the level tide lands as it could more easily build terminals and switchyards on them than on any of the hilly areas in the port cities.⁸⁸ The Oregon Improvement Company was similarly accused of lobbying in the convention.

86 Tacoma Daily Ledger, July 18, 1889.

87 Seattle Post-Intelligencer, July 18, 1889. The editorial continued, "This piece of sharp practise is precisely what might be expected from the tide land grabbers, but we have been surprised to see that certain lawyers of standing and character lend themselves to it."

88 Ibid., August 9, 1889. On July 23, 1889 the paper said, "It is stated that the agents of the Northern Pacific, a corporation that is most extensively interested in the proposed tide-flat grab, boast that a majority of the tide-lands committee of the constitutional convention are their friends, and that the report which will be made by the committee will be favorable to their scheme."

The newspaper believed that these lobbies would ask their friends in the convention to delay and stall action on the tide land article until the disposition of the tide lands was thrown to the legislature. The paper said, "This result . . . will assist the great conspiracy by which it is proposed to rob the state of property worth many millions of dollars."⁸⁹

The railroads were not alone in their hopes that the convention would provide for the sale of tide lands. The Tacoma Chamber of Commerce called a special meeting to see if definite action could not be taken towards realizing their hopes. A resolution was adopted recommending that the convention provide "for the sale of school, tide flats, and shore lands."⁹⁰ In all probability the Tacoma Chamber of Commerce discussed the principles forwarded by the Seattle shore line owners.

A week before the meeting of the Tacoma Chamber of Commerce the shore line owners of Seattle had called a formal meeting to see what could be done to influence the convention toward selling state lands.⁹¹ It was a secret meeting but word leaked out that agents were to be sent to Olympia to lobby in behalf of the Seattle shore owners.⁹² A pamphlet

89 Seattle Post-Intelligencer, August 15, 1889.

90 Tacoma Daily Ledger, July 30, 1889.

91 Seattle Post-Intelligencer, July 23, 1889.

92 Ibid.

prepared by the committee had the names of J. R. Lewis, Governor Squire, E. P. Ferry, A. A. Denny, J. P. Gale and George Stetson written across the top. Below these names was the body of the pamphlet.⁹³

At a meeting of the owners of shore property of this city the above were appointed a committee to communicate with shore land owners on the Sound and urge them to send committees to the convention to take measures as may seem necessary and expedient to place before the constitutional convention our views and claims of the rights of said shore owners and of the parties who have placed valuable improvements on the water front.

It appears to us that millions of dollars worth of shore property is now in jeopardy - in danger of being confiscated by the State, to the irreparable injury of the private and industrial interests of Western Washington - hence we urge upon you the absolute necessity of prompt and aggressive action.

(Signed)

John Leary, George Stetson, J. F. McNaught⁹⁴

This pamphlet urged lobbying by the cities on a grand scale, and, with the lobbying being done by the railroads, government patent holders, corporations and real estate companies, it is easily understandable that both the convention delegates and the newspapers complained of the ubiquity of the

93 J. R. Lewis was a Seattle Judge, Squire was Territorial Governor, Ferry was ex-Governor, A. A. Denny was a Seattle businessman and former delegate to the Territorial Legislature, Gale was a Seattle attorney, and Stetson was a Seattle lumberman. (Airey, "A History of the Constitution," pp. 507-508.)

94 "To Shore Owners," Seattle, July 20, 1889, Ferry Documents. John Leary and J. F. McNaught were Seattle real estate agents, Stetson was a lumberman. (Airey, "A History of the Constitution," pp. 507-508.)

onerous tide land lobby.⁹⁵ This lobby, as can be gathered, had immense power and wealth with which to work.⁹⁶ Delegate Turner's later account of the convention points this out more clearly.

In 1930 Judge Turner, who had played such an important role in the convention, recounted how hard he had worked to keep the tide lands out of railroad hands. He said that after the Spokane fire, August 4, 1889, railroad lobbyists told him that the fire was a good excuse for him to leave the convention for his home in Spokane and thus stay out of the railroads' way. He recalled that they told him that if he would leave the convention and decide to become a candidate for the United States Senate, they would give him \$25,000 for his campaign fund. Turner's biographer said that his answer to this offer was ". . . brief, direct, adequate, just, forgivably profane, and legally unprintable." He stayed in Olympia.⁹⁷

95 Seattle Post-Intelligencer, July 18, 23, August 12, 14, 15, 1889.

96 The Post-Intelligencer of August 14 mentioned a rumor circulating in Olympia that the Democratic Central Committee had been offered \$10,000 for campaign funds by the tide land owners if the Democrats would agree and forward an article providing for the sale of the tide lands. C. H. Warner, a delegate to the convention and the Democratic Central Committee Chairman denied that any such offer had been made.

97 Claudius O. Johnson, "George Turner, a Character from Plutarch," Washington Law Review, Vol. XVIII, No. 4, Nov. 1943, p. 172.

Many interests were represented by these lobbyists, and their purposes and ends were by no means identical. Some wanted to acquire title to the tide lands, others wanted to confirm their holdings, others wanted the state to sell these lands or at least not avow its ownership of them, because if the constitution did so, the state could confiscate the improvements of them if it wished. By the end of July the lobbies were successful in changing the attitude of the delegates from a resolve to lease to a resolve to sell the tide lands.⁹⁸

In the convention itself tension over the tide land article mounted daily. On July 15 J. Z. Moore of Spokane Falls asked the State Land Committee to prepare a short history of the tide lands in order that the delegates from east of the mountains would know more about the subject. Delegate Cosgrove who was on the land committee sharply replied that the tide ebbed and flowed every day and had done so for years. Cosgrove later told Moore that his committee was too busy to prepare such a history.⁹⁹

On July 26 the state land committee publicized their report¹⁰⁰ which avowed the state's ownership of tide lands, provided for their sale and recognized government patents to

98 Seattle Post-Intelligencer, August 2, 1889.

99 Ibid., July 16, 1889.

100 Tacoma Daily Ledger, July 27, 1889.

these lands as valid.¹⁰¹ One newspaper called the article a "play to the galleries on the part of the authors."¹⁰² The same paper forcefully condemned the provision that tide lands would be sold to the highest bidder. This would allow the large corporations to own all the tide lands in the state, the paper said.¹⁰³

Many of the Eastern Washington delegates disliked the article's recognition of the validity of government patents. They also disliked the clause allowing the sale of the tide lands.¹⁰⁴ Fearing that the article would be adopted if it came before the committee of the whole on August 8, the easterners combined and were able to postpone debate on it.¹⁰⁵

The Post-Intelligencer claimed in bold print that delaying the debate on the report until eventually nothing was done and the entire question of the disposition of the tide lands was left to the legislature was the condition

... the tide land combination - the Northern Pacific Railroad, the Oregon Improvement Company and an army of grabbers - has been scheming for. If it is brought about it will be a victory of an illegitimate over a

101 The Minutes, p. 220.

102 Tacoma Daily Ledger, July 27, 1889.

103 Ibid.

104 Ibid. Griffitts' remarks before the committee of the whole.

105 Walla Walla Statesman, August 9, 1889. Suksdorf, Turner, and Griffitts were responsible for delaying debate on it.

legitimate interest, the triumph of wrong and dishonesty over right and honesty. 106

Even the Puget Sound Weekly Argus that advocated the sale of the tide lands wanted the issue settled in the constitution. The paper said that the question would corrupt any legislature that considered it.¹⁰⁷ The Tacoma Daily Ledger, to the contrary, wanted the question left to the legislature which, it claimed, would give decent treatment to the owners of government patents to tide lands and to those who had improved these lands.¹⁰⁸ All three newspapers were disappointed in the article presented for debate by the land committee on August 14.

Section one of this report, which stated that the access to navigable waters of the state was to remain attainable by the people, did not declare state ownership of the tide lands, as access could be had through the exercise of the rights of eminent domain even though the tide lands, the access, were owned by individuals or corporations.¹⁰⁹ Delegate Turner proposed a substitute declaring the ownership of the tide lands by the state and invalidating all individual and corporate claims to these lands, and it was adopted.¹¹⁰ Delegates

106 Seattle Post-Intelligencer, August 9, 1889.

107 Puget Sound Weekly Argus, July 25, 1889.

108 Tacoma Daily Ledger, August 19, 1889.

109 The Minutes, p. 220.

110 Tacoma Daily Ledger, August 16, 1889.

Stiles, Weir, and T. M. Reed agreed with Turner's substitute that avowed state ownership but they wanted to give those holding claims to the tide lands a chance to protect their claims in court. This was a move designed to protect the tide land claim given to the predecessors of the Oregon Improvement Company.¹¹¹ Delegate Turner spoke against this amendment to his substitute. He said the Seattle tide land grant and the legislature's confirmation of it was not legal although a constitutional provision was needed to actually invalidate the claim.¹¹²

Delegates Weir and Stiles were insistent, however, and managed to secure, but by only a small majority vote, and amendment to Turner's substitute allowing tide land holders to protect their claims in court.¹¹³ On its final vote, when a two-thirds majority was needed for adoption, the easterners led by Turner caused the entire section to fail.¹¹⁴ Turner moved to refer the rejected section back to the State Land Committee with the recommendation that the committee prepare

111 Seattle Post-Intelligencer, August 17, 1889.

112 Ibid.

113 The Minutes, p. 382.

114 Ibid., p. 403. Eastern delegates who disliked the clause that gave the holders of tide lands the right to prove their claims in court, gave only 7 out of 30 votes for the article's adoption, while the westerners gave 28 of 39 votes for its adoption.

another one, and the delegates agreed.¹¹⁵

The section that was returned, although declaring the state's ownership of the tide lands, allowed any person to assert his claim to these lands in the courts. The second section recognized all government patents to the tide lands. The third section established a board of appraisers whose function it was to appraise all tide lands regardless of improvements on them. It also gave prior purchase rights at appraised value to all holders of tide lands, to those who improved them and to those owning adjacent property.¹¹⁶

The Post-Intelligencer called this article purposely overloaded with clauses each designed to antagonize the various delegates to the point of rejecting the entire article. The rejection of the article which would place the entire tide land issue before the legislature was the goal of the tide land lobby, the paper claimed.¹¹⁷ One prominent but unidentified delegate admitted to another newspaper the presence of a lobby but stated that the lobby's goal was the outright sale of the tide lands. The delegate said the lobby was in Olympia

... in the interest of Henry Yesler, and others of Seattle, the Northern Pacific Railroad Company, the Oregon Improvement Company, the St. Paul and Tacoma Company and every other corporation or individual

115 Ibid., p. 407.

116 Ibid., pp. 415-416.

117 Seattle Post-Intelligencer, August 21, 1889.

that has been enjoying the fruits of the tide lands. These men and corporations want them sold outright, so that they can buy them in. Some parties have had mills and manufacturies on these tide lands for many years and never paid a cent of tax to anybody. In fact, Yesler once enjoined the authorities from collecting a tax on such property, on the plea that he did not own it. 118

Some of the lobbyists wanted the outright sale of the tide lands, others wanted the question left to the legislature, but these differing desires had to be provided for then or not at all, for the convention had agreed to adjourn on August 22, and the date of discussion on the article, August 20, left but little time to secure or kill the measure.

After the article was read to the convention, Turner moved an amendment declaring that the state owned the tide lands and no patent or improvement thereon could ban the complete acceptance of this right of ownership, but his amendment failed.¹¹⁹ Delegate Durie knew, apparently, that as the section stood, the Oregon Improvement Company would secure the lands they had received from the Territorial Legislature, a condition many of the delegates opposed. And, apparently, Durie knew that if Turner's amendment was concurred in, all patents and claims to the tide lands would be invalid, another condition the delegates didn't want. In a move designed to

118 Portland Telegram, August 11, 1889, as quoted in Airey, "A History of the Constitution," p. 512.

119 Tacoma Daily Ledger, August 21, 1889.

exclude only the Oregon Improvement Company's claims, Durie proposed an amendment to the approved but not formally adopted Schedule Article. His amendment invalidated the company's claims specifically while not invalidating all other claims.¹²⁰ Durie correctly interpreted the convention's attitude, for his move was adopted with neither amendment nor debate.¹²¹

Durie's amendment cleared one troublesome feature from the section, but others were still present. The next day, August 21, on a vote taken to adopt the section, twenty-eight of the thirty-three eastern members and a few western members were strong enough to cause the section's downfall.¹²² The eastern delegates still seemed quite opposed to any recognition of claims or patents to the tide lands.

Believing that a declaration of state ownership was necessary Delegate Turner moved that such a declaration be placed in the Schedule Article. Delegate Joy and Dyer proposed similar amendments. These three attempts to secure the passage of the avowal of state ownership failed dismally. Delegate McElroy resurrected section one of the tide land article by proposing that the "Title and fee" to the tide lands is in the

120 Durie had previously stated that he would propose such an amendment which was to be directed against the company. Tacoma Daily Ledger, July 24, 1889.

121 Ibid., August 21, 1889.

122 The Minutes, p. 434.

"commonwealth and the property of the state."¹²³ This motion which omitted any reference to tide land claims and patents was adopted.¹²⁴ Section two of the separate tide land article, which disclaimed all title to tide lands patented by the United States, failed of passage, as did section three of the same report which gave prior purchase rights to improvers of the tide lands, and to the owners of land adjacent to the tide lands.¹²⁵

On the last day of the convention, August 22, 1889, the section giving the state "Title and Fee" to the tide lands was the only section before the convention for debate. This section was a transparent bit of legal verbiage that neither approved nor invalidated patents and claims to the tide lands. It failed of passage when neither party nor sectional interests were able to garnish the necessary two-thirds vote.¹²⁶ It seemed, at this point, that the lobby had attained its goal of leaving the entire tide land question to the legislature.

Foreseeing that some statement of state ownership was needed, although it would receive opposition in the convention, several Republican delegates had held a secret meeting on

123 Ibid., p. 445.

124 Ibid. The easterners again sanctioned the passage of this article. They cast 21 out of the 30 votes they had for its adoption, while the western votes were divided half and half.

125 Ibid., p. 434.

126 Ibid., p. 451.

August 18 to develop a plan that would result in the solution to the tide land problem. It was then decided that all Republicans who led opposing factions in the convention would be conferred with, and a new tide land article would be proposed. The new article was to declare state ownership of the tide lands but leave everything else to the legislature.¹²⁷ By the twenty-second of August most of the Republicans had been contacted and the new article had been prepared.

On the eve of the final day of the convention, Delegate Mires conferred with Republican Delegate Stiles and Delegate Weir who had, Mires said later, consistently opposed all mention of the tide lands in the constitution.¹²⁸ Mires, Stiles and Weir talked far into the night before agreement between them was reached.¹²⁹

On August 22, after McElroy's "Title and Fee" section had been defeated, Mires introduced a measure, had it seconded and railroaded through before any amendments could be made to it.¹³⁰ Mires' proposal had the same intention as the numerous proposals made by Turner. It declared the state's ownership

127 Tacoma Daily Ledger, August 19, 1889. P. C. Sullivan of Tacoma was chairman of the caucus.

128 This is not altogether factual, both Weir and Stiles had voted for the final adoption of Turner's proposals at one time or another.

129 Austin Mires, "Remarks on the Washington Constitution," Pacific Northwest Quarterly, Vol. XXII, No. 4, p. 282.

130 The Minutes, p. 454.

of the tide lands but differed in that it gave holders of tide land property the right to prove their claims to these lands in court and recognized United States patents. It left the disposition of the tide lands to the legislature. Other delegates, Joy, Dyer, Griffitts, and McElroy, had tried to provide similar sections but to no avail.

The Republican caucus was probably successful, as 80 per cent of the Republicans voted in favor of Mires' proposal. However, if the Democrats had not also given a large majority of their vote to the proposal, the necessary two-thirds majority would not have been attained. The eastern delegates had consistently voted against every tide land measure until August 21, when they gave an increasing majority of their votes to every measure, climaxing in the vote on Mires' proposal where only two of their number voted against it. The western delegates were divided in all their votings and did not even give three fourths of their strength to Mires' proposal.

Delegate Turner, who had proposed three amendments that were much the same as the proposal finally adopted, was leader of the Republican forces in the convention, but he was not personally popular with all the Republicans because of his Democratic leanings and his personal ambition. But neither this faction nor the sectional and party affluences explained the action of the delegates in the convention. The fact

remains that before the convention's committees were appointed the delegates desired to lease the tide lands and desired to keep their disposition out of the hands of the legislature. Only one element, consistently recurring in the convention had the power to change the minds of the delegates and secure the adoption of the article which was to allow the sale of the tide lands, and that was the lobby.

One Eastern Washington newspaper that thought very little of the tide land article said,

The people of the territory had the right to expect something better from the constitutional convention in its dealings with the tide land question, than a weak and cowardly compliance with the wishes of the Northern Pacific Railroad, The Oregon Improvement Company, and a host of land grabbers in general. 131

A Western Washington paper said the failure to define the policy of the state in regard to the tide lands was one of the basic failures of the constitution.¹³²

The constant buffets the delegates received from the lobby, and their own varied views on the tide land question prevented the convention from doing more than declare the state's ownership of the tide lands. The immediate need with which the delegates were confronted was to stop the encroachments on the state-owned tide lands, and this need they

131 Walla Walla Statesman, August 23, 1889.

132 Seattle Post-Intelligencer, August 23, 1889.

alleviated by declaring the state's ownership despite the pressure brought to bear on them by the lobbies. It cannot be claimed that the delegates allowed the sale of the tide lands, they merely allowed the legislature to sell them. The fact that no constitutional provisions were made for their sale is a tribute to the integrity of the delegates to the convention.

After adopting the tide land article by a vote of fifty to twenty,¹³³ the convention prepared for an evening session, their first, to sign the completed constitution.

133 The Minutes, p. 459.

CHAPTER VIII

EPILOGUE

A large crowd filled the hall when the delegates met for their final session the evening of August 22. On a table in front of the hall were several blank pieces of paper on which the delegates were to place their signatures signifying the convention's adoption of the constitution.¹ The more humorous aspects of the delegates' characters that had been repressed by the serious nature of the convention's fifty-day session now emerged as the delegates filed forward to sign their names. Delegate Govey secured complete silence and then said,

Be it Resolved, that the thanks of the convention be tendered to those able mariners who so ably navigated the convention over the unknown tracts which lie between high and low water marks: The Honorables George Turner and T. C. Griffiths. 2

Immediately other resolutions similar in nature were made. It was resolved that Delegate Turner could take the "harbor rims" back to Spokane with him and that the area

1 Tacoma Daily Ledger, August 23, 1889.

2 Seattle Post-Intelligencer, August 23, 1889.

reserved for harbors be free of pilotage charges for "Prairie Schooners."³ Thanks were tendered to ex-Governor "Flethoric Pockets" Semple, for the grace and dignity with which he presided over the lobby.⁴ Delegate Buchanan was given leave to print his railroad commission article. The "ladies" were granted permission "to frame a constitution if the one now to be submitted is not adopted by the people."⁵

Still in a jocular mood, the delegates recalled the spirited defense made by Delegate J. Z. Moore of Spokane Falls, when he was accused of receiving a case of whisky from the railroad lobby. Moore had shown the receipt he received when he paid for the whisky, hoping to prove that it was not a gift from the lobby. Then to pacify the prohibitionists at the convention, Moore had said the case of whisky was a whole year's supply, but every word he spoke brought more austere frowns to the faces of the prohibitionists. He finally sat down quite despairingly, much to the amusement of the rest of the convention.⁶

3 Ibid. During the discussion over the harbor article Turner was accused of knowing nothing about harbors or ships. It was stated that his knowledge of boats was restricted to "Prairie Schooners."

4 Ibid. The paper constantly referred to him by this name.

5 Tacoma Daily Ledger, August 23, 1889. This was a reference to the hard but unsuccessful struggle in the convention to secure constitutional women's suffrage.

6 Ibid., July 17, 1889.

After the Walla Walla delegates were given permission to take the subsidy question home with them, and Delegate Prosser was allowed to use the convention hall for a speech on leasing the school lands, the convention returned to signing the constitution.⁷ Delegates Hungate and Kellogg were ill and did not sign the constitution, although they did so at a later date. Newton, the labor delegate, refused to sign, and Neace was absent from the convention at that date and never signed it.⁸

The signatures on the constitution were barely dry before the criticisms of it and comments on it began to be heard. "The principal source of objection," said the Post-Intelligencer, "is that there is so much attempt at legislation."⁹ Most of the comment on the constitution was that it was too legislative.¹⁰ A second objection was that it organized a state government that was too expensive considering the income of the state. Several letters to the editor that appeared in the Tacoma Daily Ledger, protested this "unwarranted expense."¹¹ It was claimed that salaries were too high

7 Seattle Post-Intelligencer, August 23, 1889.

8 Ibid.

9 August 12, 1889.

10 The Post-Intelligencer, the Spokane Falls Review, the Asotin Sentinel, the Tacoma Daily Ledger, the Puget Sound Weekly Argus, and the Walla Walla Weekly Union all called the constitution "too legislative."

11 Tacoma Daily Ledger, September 9, 1889.

and that there were too many state offices provided in the constitution; blame for this was placed on the delegates to the convention, who, it was said, created those offices so they themselves could fill them.¹² During the campaigns before the election of the state's first officials both political parties made an especial appeal to the electorate along lines of economic conservatism shown in the convention. However, political parties were not responsible for the number of offices or the amount of the salaries the constitution provided which in comparison with the governments of other states were neither too numerous nor too high.¹³

The Seattle Post-Intelligencer claimed that the constitution failed on three issues, by not stating the state's policy in regard to the tide lands, by virtually confiscating the lands of aliens, and by not establishing a more concrete plan for the control of the railroads.¹⁴ The Walla Walla Weekly Union derided the constitution's prohibition of the Hunt subsidy scheme that Walla Walla was so interested in.¹⁵ The Spokane Falls Review disliked the constitution's public indebtedness article (section six) which limits city

12 Walla Walla Statesman, July 29, 1889.

13 Chapter II, above.

14 Seattle Post-Intelligencer, August 23, 1889. Prior tide land purchase rights for adjacent owners was provided in an act passed by the first legislature.

15 Walla Walla Weekly Union, August 24, 1889.

indebtedness to an amount equal to ten per cent of the assessed value of the property in the city. This section, the paper felt, would not allow properly rebuilding the fire-devastated city of Spokane Falls.¹⁶ The Washington Standard believed that too much latitude was given to the legislature in providing for the disposition of lands and the control of corporations.¹⁷ The Walla Walla Statesman on September 19 called the constitution a "tool for corporations."

These newspapers criticized the constitution or its component parts, mostly in general terms. Later events were to show the more specific faults and failings. For instance, the section that prohibits alien ownership of land (Article 11, Section 33) fails in its basic philosophy, for the right to private property under American law is not considered to be one of the rights of citizenship.¹⁸

In the same way the delegates that framed the constitution let the issue of economy obscure the basic principles of state government, for what legislature can provide in sixty days all the legislation needed for the state to function efficiently for two years? Yet this provision was inserted in the constitution mainly to save the state money in legislative salaries.

16 Spokane Falls Review, July 26, 1889.

17 Washington Standard, September 27, 1889.

The various salaries provided in the constitution for the legislators and other state officers, were, at the time the constitution was framed, quite in accord with the salaries of officials in other states, but later they came to be considered to be quite low.¹⁹ The constitutional convention incorporated a clause that allows the legislature to raise the salary of the public land commissioner and the court justices, but all the other salaries are stated and no provision is included to allow their increase.²⁰ It would have been better if some provision had been inserted in the constitution which would allow the legislature to increase all salaries.

The judicial system established by the constitution was, and still is, quite remarkable. In the early days of statehood it was considered one of the best judicial systems in the country.²¹ However, the increased tempo of modern life necessitates a change in court procedure in a manner that will expedite its business.²²

18 Austin F. McDonald, American State Government and Administration, p. 67.

19 State legislators get \$5.00 per day, the governor, \$6,000 a year, the lieutenant governor, the secretary of state, the state auditor, and the attorney general get \$3,000 a year, and the state treasurer gets \$2,000 a year.

20 The salary of the public land commissioner can be raised by the legislature.

21 Theodore Stiles, "The Constitution of Washington," Washington Historical Quarterly, Vol. IV, No. 4, p. 283.

22 Report of the Advisory Constitutional Revision Committee, p. 32.

The constitution provided for uniform county governments and provided for the establishment of new counties. However, the delegates who framed it did not foresee the future need to combine counties and to allow the various counties to have a county government more in accord with their population and size. The delegates did not see that the provisions they established to allow cities to govern themselves would be practically impossible of fulfillment.²³ Other provisions the delegates inserted in the constitution, such as declaring the use of waters for manufactories to be a public use, were later ruled invalid by the courts.²⁴

The two major objections to the constitution are not that it was framed by lobbyists or that it is a "tool of corporations" but that it is too legislative and is phrased too ambiguously. It is claimed that present needs require that more latitude and scope of powers be given to the various branches of the state government. Legislative matters found in the constitution, such as what a legislative bill can contain and the salaries of state officials, should have been left to the legislature to decide. If it had been left to that body, it would probably be more in harmony with existing demands.

23 Theodore Stiles, "The Constitution of Washington," Washington Historical Quarterly, Vol. IV, No. 4, p. 284.

24 Washington Reports, "Cases Determined in the Supreme Court of Washington," 1905, pp. 648-649.

The complaint has been made that the delegates did not know how to express themselves clearly and that they did not adequately state their intentions and meanings.²⁵ There is the possibility that the delegates, confronted with various pressures, opposing interests, and their own desires, were purposely ambiguous, hoping to placate all those concerned. This ambiguity allowed the legislature to ignore provisions left to it to enforce and allowed the courts to interpret the constitution's meanings in various ways. The delegates never spoke of income as property, but the courts did;²⁶ and although the delegates spoke of intending the legislature to control common carriers, a margin of action was left, and not until 1905 was there a strong move by the legislature to do this. The delegates wanted to realize full benefit of the funds from the sale of the school lands, but the ambiguousness of the constitution allowed the legislature years before public pressure forced it to even provide for the survey of these lands.²⁷

In 1889 the Democrats blamed the Republicans for the failure of the constitutional convention to restrict corporate activity, and the blame was thrown right back at them. Both parties, however, recommended in their platforms that the

25 Theodore Stiles, "The Constitution of Washington," Washington Historical Quarterly, Vol. IV, No. 4, p. 283.

26 See Chapter VI.

27 See Chapter VII.

constitution be adopted. The people accepted the constitution but not wholeheartedly. They agreed with ex-delegate and Chairman of the convention, Hoyt, who said the constitution was "not so awfully good nor so awfully bad."²⁸ The desire for statehood led many to accept the constitution although they did not totally approve of it. The Asotin Sentinel of August 23, 1889 reflected the opinion of many people when it stated,

In view of everything it is perhaps best to vote the constitution as it is. We have been seeking statehood so long that now that we have it in our grasp, it will be hard to reject the opportunity now offered, as we have no assurance that any constitution framed by any body of men whom we may choose, will be less free from objectionable features.

Despite this tepid sanctioning of the constitution, Asotin County was one of the five counties that voted against it in the elections of October 1, 1889. The delegates from Walla Walla were jokingly allowed to take the subsidy issue home with them, and apparently they did, which might account for Walla Walla County's similar action in rejecting the constitution. Five of the counties associated with the Hunt subsidy scheme, Asotin, Walla Walla, Franklin, Columbia, and Garfield, voted against the constitution's ratification.²⁹

28 Portland Morning Oregonian, August 23, 1889.

29 Washington State, Secretary of State, "Official Election Returns of Washington Territory at a General Election Held on the First Day of October, 1889." Microfilm of the Original, Microfilm Collection, University of Washington.

The opposition of these counties did not arise from their previous Democratic nature as opposed to the general Republicanism of the state, for all but Franklin County voted for a Republican governor and a Republican senator. Perhaps the opposition centered around their age-old desire to create a separate state of the territory east of the Cascades. Or again, it might have arisen after the Walla Walla Statesman said, falsely, that the constitution had been tampered with by the Republicans to allow railway roadbeds to be exempt from taxation.

Save for these dissenting counties, there was little opposition and the constitution was adopted by a vote of 40,152 to 11,879.³⁰ Women's suffrage and prohibition were voted down, and Olympia slightly shaded Ellensburg and North Yakima as the city selected for the capital.³¹ On November 11, 1889 President Harrison admitted the state into the Union.

Seven days after admission into the Union the first State Legislature assembled and heard two differing estimations of the constitution. Territorial Governor Miles C. Moore in his farewell address to the legislature said,

... a good foundation has been laid in the adoption of an admirable Constitution, a Constitution pronounced by eminent authorities 'as good as any State now has,

30 Ibid.

31 Ibid.

and probably as good as any state will ever get.'³²

A few minutes later the newly elected first State Governor, E. P. Ferry, in his inaugural address, appealed to the people to support the constitution and accept the new government.

The constitution which has been adopted by our people and on which our State Government must rest, although not universally approved appears to be satisfactory to a great majority of our fellow citizens. No one should have anticipated a perfect constitution. An instrument of that character never has been and never will be devised. If the constitution is as perfect as could reasonably be expected, taking into consideration existing conflicting interests and radical differences in opinion that are entertained upon many important Governmental and other questions, then all should be content, submit to the will of the majority and at least be willing to give to the constitution a fair trial. 33

Today, fifty years after it was created, the constitution is still prominent, and, although amended, its essence has not been changed, a fitting memorial to its creators, the delegates to the Washington State Constitutional Convention.

32 Charles M. Gates, "Messages of the Governors of the Territory of Washington to the Legislative Assembly," 1854-1899, p. 279.

33 Ibid., p. 283.

APPENDIX

Barton's Legislative Hand-Book and Manual of the State of Washington, 1889-1890
Compiled by C. M. Barton, Secretary of the Senate, pp. 167-168

Member	Politics	Age	Place of Birth	Occupation	Residence
H. E. Allen	Republican	31	Indiana	Lawyer	Spok. Falls
S. H. Berry	Democrat	40	Missouri	Realtor	Chehalis
N. G. Blalock	Democrat	53	N. Carolina	Physician	Walla Walla
O. A. Bowen	Republican	45	Michigan	Millman	Skamokawa
J. J. Browne	Democrat	45	Ohio	Banker	Spokane
Daniel Buchanan	Republican	69	Scotland	Farmer	Ritzville
J. A. Burke	Republican	56	New York	Farmer	Kalama
Harrison Clothier	Democrat	48	New York	Merchant	Mt. Vernon
C. P. Coey	Republican	33	New York	Merchant	Rockford
George Comegys	Republican	50	Missouri	Stockman	Oakesdale
S. G. Cosgrove	Independent	42	Ohio	Lawyer	Pomeroy
D. J. Crowley	Republican	35	Maine	Lawyer	Walla Walla
F. M. Dallam	Republican	40	Missouri	Editor	Davenport
F. M. Dickey	Republican	31	Pennsylvania	Teacher	Sackman
R. O. Dunbar	Republican	44	Illinois	Lawyer	Goldendale
D. E. Durie	Democrat	42	Scotland	Merchant	Seattle
T. P. Dyer	Republican	33	Missouri	Lawyer	Seattle
Edward Eldridge	Republican	61	Scotland	Farmer	Whatcom
J. T. Eshelman	Democrat	35	Missouri	Preacher	N. Yakima
H. W. Fairweather	Republican	37	New Brunswick	Banker	Sprague
C. T. Fay	Republican	61	Massachusetts	Farmer	Steilacoom
B. B. Glascock	Democrat	46	Missouri	Realtor	Sprague
M. M. Godman	Democrat	33	Missouri	Lawyer	Dayton
J. F. Govey	Republican	46	Ohio	Banker	Olympia
W. B. Gray	Democrat	41	Maine	Stockman	Pasco
T. C. Griffiths	Democrat	31	Illinois	Lawyer	Spokane
Thomas Hayton	Republican	57	Kentucky	Farmer	Fir
Francis Henry	Democrat	62	Illinois	Lawyer	Olympia
Gwin Hicks	Democrat	31	Wash. Terr.	Lawyer	Tacoma
J. P. Hoyt	Republican	47	Ohio	Banker	Seattle
James Hungate	Democrat	45	Illinois	Stockman	Pullman
Robert Jamieson	Republican	35	Scotland	Mining Eng.	Wilkeson
Richard Jeffs	Democrat	62	New York	Hopgrower	Pialschie
George H. Jones	Republican	32	Ohio	Lawyer	Pt. Townsend
O. H. Joy	Republican	59	Maine	Farmer	Boisford
J. C. Kellogg	Republican	68	New York	Physician	Seattle
J. R. Kinnear	Republican	45	Indiana	Lawyer	Seattle
H. M. Lillis	Republican	33	Michigan	Teacher	Tacoma
A. A. Lindsley	Republican	41	Wisconsin	Stockman	Union Ridge
S. H. Manley	Republican	42	Ohio	Physician	Colville
J. P. T. McCroskey	Democrat	61	Tennessee	Farmer	Colfax
J. T. McDonald	Democrat	41	Ontario	Miner	Ellensburg
M. J. McElroy	Labor	31	Maine	Logger	Seattle
John McReavy	Democrat	49	Maine	Merchant	Skokomish
T. T. Minor	Republican	45	Connecticut	Physician	Seattle
Austin Mires	Republican	37	Iowa	Lawyer	Ellensburg
J. Z. Moore	Republican	44	Kentucky	Lawyer	Spokane
R. S. More	Democrat	61	Scotland	Farmer	Puyallup
Morgan Morgans	Republican	59	Wales	Miner	Black Diamond
Lewis Neace	Democrat	55	Germany	Farmer	Waitsburg
W. L. Newton	Labor	35	Kentucky	Miner	Olney
James Power	Republican	40	Ireland	Hopgrower	La Conner
Wm. F. Prosser	Republican	55	Pennsylvania	Surveyor	N. Yakima
T. M. Reed	Republican	64	Kentucky	Lawyer	Olympia
J. M. Reed	Democrat	47	Missouri	Farmer	Oakesdale
Albert Schooley	Republican	40	Pennsylvania	Teacher	Florence
B. L. Sharpstein	Democrat	61	New York	Lawyer	Walla Walla
J. A. Shoudy	Republican	46	Illinois	Merchant	Ellensburg
Louis Sohns	Republican	62	Germany	Banker	Vancouver
G. H. Stevenson	Democrat	31	Missouri	Fisherman	Cascades
T. L. Stiles	Republican	41	Ohio	Lawyer	Tacoma
R. F. Sturdevant	Republican	47	Pennsylvania	Lawyer	Dayton
F. F. Suksdorf	Democrat	46	Germany	Farmer	Spangle
E. H. Sullivan	Republican	39	Michigan	Lawyer	Colfax
P. C. Sullivan	Republican	30	Nebraska	Lawyer	Tacoma
G. W. Tilbetts	Republican	43	Maine	Farmer	Gilman
J. J. Travis	Democrat	30	Tennessee	Physician	Chewelah
George Turner	Republican	39	Missouri	Lawyer	Spok. Falls
Jesse Van Name	Democrat	32	Illinois	Lawyer	Kelso
C. H. Warner	Democrat	53	New York	Miller	Colfax
Allen Weir	Republican	35	California	Editor	Pt. Townsend
J. T. Weisenberger	Independent	33	Illinois	Lawyer	Whatcom
A. J. West	Democrat	50	Ireland	Lumberman	Aberdeen
H. C. Willison	Democrat	44	Indiana	Physician	Pt. Townsend
Henry Winsor	Republican	64	Ohio	Farmer	Shelton
W. W. Waltman*	Democrat	30	Pennsylvania	Lumberman	Colville

*Through a mistake in the election count, W. W. Waltman went to the convention but was replaced by Delegate J. J. Travis six days after that body convened.

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